No. 14-400

IN THE

Supreme Court of the United States

CHARLES E. HARRIS, III,

Petitioner,

v.

MARY K. VIEGELAHN, CHAPTER 13 TRUSTEE,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether, when a debtor converts a chapter 13 bankruptcy case to one under chapter 7, funds that the debtor has voluntarily paid to the chapter 13 trustee for disbursement to creditors, but that have not yet been disbursed, revert to the debtor or should be distributed to creditors in accordance with the confirmed chapter 13 plan.

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BRIEF FOR RESPONDENT

STATEMENT

This case presents the question whether, once a debtor has confirmed a chapter 13 plan and begun making payments to the trustee to be distributed to creditors, the debtor can reclaim payments that have not yet been distributed by converting the case to chapter 7. No provision of the Bankruptcy Code answers this question expressly. But the overarching structure and purpose of chapter 13, together with the established common-law principles that inform its interpretation, make clear that once a debtor has proposed a repayment plan, the plan has been confirmed, and the debtor has paid money to the trustee for distribution to creditors under that plan, the creditors—not the debtor—are entitled to those funds in the event of conversion.

A. Statutory Framework

Individual debtors may seek bankruptcy relief under either chapter 7 or chapter 13 (or, for some high-income debtors, chapter 11) of the Bankruptcy Code. Both chapters 7 and 13 are relevant here.

1. Under chapter 7, the debtor must surrender all of his nonexempt assets to the chapter 7 trustee for liquidation. Specifically, the filing of a chapter 7 petition creates a bankruptcy estate composed of, among other things, "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. §541(a)(1). With certain narrow exceptions, property acquired by an individual debtor after the date of filing, such as the debtor's postpetition wages, "is generally not included in the estate." Pet. App. 5a; *see* 11 U.S.C. §541(a).

During the bankruptcy case, property in the bankruptcy estate is protected from creditors' claims. The filing of the petition itself acts as an automatic stay of any action to enforce a prepetition claim against the debtor or any property of the estate, 11 U.S.C. §362(a)(1), (2), (4), (6) or otherwise to "exercise control over property of the estate," *id.* §362(a)(3). The automatic stay ensures that the trustee can marshal and distribute the debtor's assets without disruption and that creditors are not forced to compete in a "race to the courthouse" to enforce their claims.

An individual debtor may exempt certain assets—*e.g.*, a certain amount of equity in a residence or a vehicle—from the estate and thus from creditors' claims. 11 U.S.C. §522. If there is any nonexempt estate property (in most chapter 7 cases, there is none), the chapter 7 trustee sells that property and distributes the proceeds according to creditors' statutory priority. Creditors

who wish to receive a distribution from the estate must file a proof of claim, which is deemed allowed unless a party in interest objects. *Id.* §§501, 502. If a party in interest objects, the bankruptcy court determines whether the claim should be allowed, generally by applying nonbankruptcy law. *See id.* §502(b).

In return for surrendering nonexempt prepetition assets for distribution to creditors, the chapter 7 debtor may receive a discharge of certain prepetition debt, meaning that after the bankruptcy those creditors can no longer pursue the debtor for payment on their claims, whether or not they received a distribution in the chapter 7 case. 11 U.S.C. §§524, 727; *see Law* v. *Siegel*, 134 S. Ct. 1188, 1192 (2014).[1] While the chapter 7 debtor must relinquish his nonexempt prepetition property, he is entitled to keep any property he acquires after bankruptcy free of prepetition creditors' claims.

2. Chapter 13 works quite differently. "[A] Chapter 13 filing proposes a plan to pay creditors with future income rather than liquidation of existing assets," as would occur in chapter 7. Pet. App. 5a. Under chapter 13, eligible individual debtors with a regular income may retain their prebankruptcy assets, propose a plan to repay prepetition creditors over time from their income going forward, and receive a discharge of certain prepetition debts upon completion of the repayment plan. *Hamilton* v. *Lanning*, 560 U.S. 505, 508 (2010).

In a chapter 13 case, the bankruptcy estate is thus comprised not only of the debtor's interests in property "as of the commencement of the case," 11 U.S.C.

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[1] In certain circumstances, a discharge may be denied, *see* 11 U.S.C. §727, and certain debts are nondischargeable, *see id.* §523.

§541(a)(1), but also "earnings from services performed by the debtor after the commencement of the case, but before the case is closed, dismissed, or converted to a case under chapter 7, 11 or 12 of this title, whichever occurs first." *Id.* §1306(a).

Moreover, unlike in chapter 7, unless a confirmed plan provides otherwise, the debtor "remain[s] in possession of all property of the estate" during the bankruptcy case. 11 U.S.C. §1306(b). Accordingly, the role of the trustee in a chapter 13 case is different from the role of a chapter 7 trustee. Unlike the chapter 7 trustee, the chapter 13 trustee generally does not take possession of and liquidate the debtor's property to make distributions to creditors. Rather, the debtor himself is charged with the rights and duties of a trustee with respect to the property of the estate in his possession.

The lynchpin of any chapter 13 case is the plan. A chapter 13 debtor is required to file a proposed plan for repayment of his creditors promptly after the petition date. 11 U.S.C. §1321; Fed. R. Bankr. P. 3015(b) (plan must be filed within 14 days of petition).

Although the debtor and his creditors may negotiate over the creditors' treatment in the plan, the Code contains certain substantive requirements that must be met for a plan to be confirmed over a creditor's objection. For secured creditors (other than the holder of a mortgage on the debtor's principal residence, whose rights typically cannot be modified in chapter 13, *see* 11 U.S.C. §1322(b)(2)), the plan must provide either that the debtor will surrender the collateral to the creditor or that the creditor will receive the full value of its collateral under the plan and will retain its lien until the underlying debt is paid in full or the debtor is discharged. *Id.* §1325(a)(5). For unsecured creditors, the

plan must provide either that they are paid in full, or that all of the debtor's projected disposable income during the three- or five-year plan period will be dedicated to repaying their claims. *Id.* §1325(b)(1).

Confirmation of a plan marks a sharp divide in the relationship between the debtor and his creditors. Prior to confirmation, that relationship is governed by rules set forth in the Bankruptcy Code. For one thing, the filed plan must "provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan." 11 U.S.C. §1322(a)(1). And in the period after the plan is filed—even before confirmation—the debtor is required to begin making periodic payments from those funds to the trustee. "Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the [petition date], whichever is earlier, in the amount ... proposed by the plan to the trustee." *Id.* §1326(a)(1)(A).

While the trustee collects these amounts before confirmation, they may not be disbursed to creditors until a plan is confirmed. "A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or the denial of confirmation." 11 U.S.C. §1326(a)(2). If a plan is confirmed, the trustee is obligated to begin making distributions "as soon as is practicable." *Id.* If a plan is not confirmed, the trustee is generally required to return the funds to the debtor. *Id.*

Following plan confirmation, the basic relationship between a debtor and his creditors is governed by the confirmed plan. A confirmed plan is a contract between the debtor and creditors that "bind[s] the parties, gen-

erating benefits and corresponding responsibilities." *In re Michael*, 699 F.3d 305, 320 (3d Cir. 2012) (Roth, J., dissenting); *see* 11 U.S.C. §1327(a) ("The provisions of a confirmed plan bind the debtor and each creditor."). Following confirmation, the debtor is obligated to make payments to creditors pursuant to the plan, and creditors are bound by their treatment under the plan. Indeed, even a substantively unlawful provision of a plan is fully binding on and enforceable against creditors, once the order confirming the plan has become final and non-appealable. *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 268-271 (2010).

Because the amount the debtor is required to pay to the trustee for the purpose of repaying creditors is based on the debtor's projected disposable income over the plan period, *see* 11 U.S.C. §1325(b)(1), the plan can be modified, at the request of the debtor, the trustee, or an unsecured creditor, with court approval, in the event the debtor's financial condition changes (either for better or for worse) during the repayment period. *Id.* §1329.

Upon confirmation, the debtor typically regains title to property of the estate. "Except as otherwise provided in the plan or the order confirming the plan, the confirmation of the a plan vests all of the property of the estate in the debtor." 11 U.S.C. §1327(b). Thus, after confirmation, although the plan requires the debtor to make payments out of his future income to the trustee to satisfy creditors' claims, *see id.* §1322(a)(1), except to the extent the plan provides otherwise the debtor has full right and title to, and control over, all of his prepetition and postpetition property.

As in chapter 7, creditors who seek to receive a distribution under the plan on account of their prepetition claims must file a proof of claim, to which parties in in-

terest may object. The chapter 13 trustee then makes payments to creditors holding allowed claims under the terms of the plan.

Plan confirmation in chapter 13 may occur soon after the case is initiated, before creditors' claims can be adjudicated. *See* 11 U.S.C. §1324(b) (plan confirmation hearing must be held no later than 45 days after initial meeting of creditors); Fed. R. Bankr. P. 3002(c) (proofs of claim must be filed no later than 90 days after initial meeting of creditors). In cases in which the claims allowance process is not yet finished at the time of plan confirmation, the trustee will be required to await the conclusion of that process to determine the amount each creditor is entitled to receive under the plan.

Upon completion of the plan, the debtor may obtain a discharge of certain prepetition debt. 11 U.S.C. §1328.[2] Because under chapter 13 a debtor can obtain a discharge while still keeping his prepetition property, such as a house or car, debtors who have meaningful prepetition assets often choose to seek relief under chapter 13 rather than chapter 7. Chapter 13 is thus designed to benefit both creditors, who must receive at least as much as they would in a chapter 7 liquidation, *id.* §1325(a)(4), and debtors, who are able to keep their prepetition property that would otherwise be sold to pay claims. *See Michael*, 699 F.3d at 319 (Roth, J., dissenting) (payments to creditors under a chapter 13 plan "are the *quid pro quo* that that debtor ... give[s] up during the pendency of the reorganization in return for being permitted to stave off foreclosure and cure the mortgage default [or] retain the use of his automobile").

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[2] As in chapter 7, the debtor can be denied a discharge under some circumstances, 11 U.S.C. §1328, and some debts are nondischargeable, *id.* §523.

Not all debtors successfully complete their chapter 13 plans, however. Chapter 13 debtors who are eligible to be chapter 7 debtors may thus convert their chapter 13 cases to chapter 7 or dismiss them if they cannot complete their plans. 11 U.S.C. §1307(a), (b). The bankruptcy court may also convert or dismiss a chapter 13 case at the request of a party in interest for cause, including the debtor's default on his obligations under the plan. *Id.* §1307(c). When a chapter 13 case is converted to chapter 7, the chapter 7 estate consists of the estate property that existed at the time the chapter 13 petition was filed, *id.* §348(f)(1)—which means that it does not include the debtor's postpetition income—unless the debtor converts in bad faith, *id.* §348(f)(2).

B. Facts And Proceedings Below

1. Having fallen behind on his home mortgage loan, petitioner filed a chapter 13 bankruptcy petition on February 24, 2010. JA1. That same day, he filed a proposed chapter 13 plan. JA26. The bankruptcy court confirmed the proposed plan on April 15, 2010. JA43.

The confirmed plan obligated the debtor to make monthly payments to the "supervision and control of the Chapter 13 Trustee" in "an amount equal to the Debtor's monthly disposable income or an amount sufficient to pay the claims of general unsecured creditors in full over the term of the plan." JA26. Specifically, the plan required the debtor to pay the trustee $530 per month for distribution to creditors. JA37. The plan also provided, contrary to the default rule provided by §1327(b), that "[u]pon confirmation of the plan, all property of the estate shall not vest in the Debtor(s), but shall remain as property of the estate subject to the automatic stay of 11 U.S.C. §362." JA31.

In a section entitled "Payment of Claims," the plan established a clear contractual entitlement of creditors to the plan payments: "Allowed claims shall be paid to the holders thereof in accordance with the terms hereof. From the monthly payments described above, the Chapter 13 Trustee shall pay the following allowed claims in the manner and amounts specified." JA27. The plan then set forth general provisions for the order of payment of administrative expenses, priority claims, secured claims, and unsecured claims. JA28-29.

Of the $530 paid to the trustee each month, $352 was to go to the debtor's mortgage lender, Chase Manhattan, to cure the amount by which the debtor had fallen behind on his mortgage prior to bankruptcy. *See* 11 U.S.C. §1322(b)(5) (chapter 13 plan may provide for "curing of any default ... and maintenance of payments while the case is pending" on long-term secured debt). Another $75.34 a month was to be paid to a consumer electronics store (a secured creditor) until that claim was paid off. JA34. The debtor's attorney was also to be paid $100 a month to satisfy attorney's fees of $3,000. JA39. The plan mandated that all remaining funds would be used to pay off $20,458 in unsecured debt. JA36-37. In addition, the plan required the debtor to continue to make regular monthly mortgage payments of $960 directly to Chase to maintain the mortgage while the case was pending. JA34; *see* 11 U.S.C. §1322(b)(5).

The effect of the plan that the debtor proposed and the bankruptcy court confirmed was thus—as chapter 13 requires—to commit all of the debtor's monthly disposable income to his creditors for the purpose of paying off his debts. No provision in the plan provided for the return of plan payments to the debtor in any circumstance.

Later in 2010, the debtor fell behind on the home mortgage payments he was required to make directly to Chase under the plan. On October 13, 2010, Chase filed a motion for relief from the automatic stay, which would permit Chase to begin foreclosure proceedings. JA4. The court lifted the stay on November 9, 2010. JA6.

Because the confirmed plan directed the trustee not to make payments to any creditor given permission to foreclose (JA32), the trustee stopped making the distributions to Chase on account of the debtor's mortgage arrearages, and instead retained in her possession $352 of the $530 she received monthly from the debtor (Pet. App. 4a). The trustee did not distribute these funds to other creditors at this time (though the plan would have authorized her to do so), but rather held them in reserve.

The reason for holding the funds in reserve was that chapter 13 debtors who are unable to meet their mortgage obligations will commonly reach agreements with their mortgage servicers to modify their mortgage loans, which would be the type of post-confirmation change in financial circumstances that would warrant a plan modification. 11 U.S.C. §1329. By reserving the amounts that had been provided to pay the mortgage arrearage, the Trustee effectively kept those funds available to meet the debtor's mortgage obligations in the event such an agreement was reached. *See* Hearing Transcript 14-15, *In re Harris*, No. 10-50655, Doc. 52 (Bankr. W.D. Tex. Feb. 14, 2010) (*Harris* Tr.). In the absence of such a plan modification, however, the confirmed plan provided that those funds should be distributed to satisfy other allowed claims. JA 27-30.

Here, the debtor never reached a modification agreement with his mortgage lender. More than one

year after the bankruptcy court granted stay relief, on November 21, 2011, the debtor filed a notice to convert his bankruptcy case to a case under chapter 7. JA7. On November 22, 2011, the bankruptcy court entered an order converting the case. *Id.*

At the time of conversion, the trustee was therefore holding $5,519.22 that the debtor had paid to her for distribution to creditors under the confirmed plan, but that had not yet been distributed to creditors. Pet. App. 4a, 31a. On November 22, 2011, the trustee paid $1,200 of those post-confirmation, pre-conversion payments to debtor's attorney, leaving $4,319.22 in her possession. *Id.*[3] On December 1, 2011, the trustee distributed the remaining funds to creditors pursuant to the plan, paying $397.78 on the secured consumer electronics loan and $3,578.78 to unsecured creditors. *Id.* The remaining $267.79 was paid as a trustee's fee. *Id.*

2. On December 29, 2011, the debtor filed a motion seeking to compel the trustee to return the $4,319 she had distributed to creditors. JA9. Following a hearing, the bankruptcy court granted the motion. JA9-10, 40. The bankruptcy court held that §348(e) of the Bankruptcy Code divested the trustee of authority to distribute plan payments to creditors upon conver-

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[3] A prior decision of the bankruptcy court, which adopted essentially the same reasoning the debtor advances here, had held that undistributed funds held by the chapter 13 trustee revert to the debtor, and that the debtor may assign those funds to pay for fees associated with converting a chapter 13 case to chapter 7. *See In re Zamora*, 274 B.R. 268 (Bankr. W.D. Tex. 2002). The debtor had made an assignment in this case. Pet. App. 31a. Although the rationale supporting *Zamora* is flawed for the same reason as the judgment under review, in light of that precedent the trustee honored the assignment and paid the debtor's attorney's fees. That payment is not encompassed by the judgment now before this Court and thus not at issue here.

sion, even with respect to payments made to the trustee prior to conversion. *Harris* Tr. 22, *citing* 11 U.S.C. §348(e). The trustee appealed to the district court.

3. The district court affirmed. Pet. App. 34a. In doing so, it relied chiefly on §348(f) of the Code, which provides that property acquired by a debtor postpetition does not become part of the chapter 7 estate at conversion. *Id.* 43a. Finding that Congress enacted §348(f) to encourage debtors to attempt chapter 13, the court concluded that the same policy concern resolved the question of who, as between the debtor and chapter 13 creditors, should receive undistributed payments held by a chapter 13 trustee upon conversion. *Id.* 43a-48a. The trustee appealed that decision to the court of appeals.

4. The Fifth Circuit reversed. Pet. App. 3a. The court of appeals rejected the conclusion that §348(f) resolved the question before it, explaining that §348(f) means only "that any funds paid by the debtor to the trustee pursuant to the Chapter 13 plan that have not been distributed at the time of conversion are not transferred to the Chapter 7 estate." *Id.* 9a. The court explained that "[n]o statute explicitly states what should happen to [the] funds" at issue here—that is, funds received by the chapter 13 trustee but not yet distributed to creditors at the time of conversion. *Id.* The court also held that §348(e) did not decide the question: Although §348(e) terminates the service of the trustee, even under the debtor's theory, the trustee "has a responsibility to distribute the remaining funds in her possession" to the party entitled to the funds. *Id.* 11a.

The Fifth Circuit held that the structure and purpose of the Bankruptcy Code required that postconfirmation, pre-conversion plan payments be paid to

creditors, not the debtor. The court explained that disbursing undistributed funds to creditors did nothing to frustrate Congress's goal of encouraging debtors to pursue chapter 13 relief and that doing so did not penalize debtors in any way. Pet. App. 24a-25a. In addition, the court observed that a confirmed plan imposes on the debtor a binding obligation to make payments to the trustee in exchange for the benefits provided by chapter 13. *Id.* 24a-26a. Moreover, there is a "crucial difference" between amounts already paid to a trustee under a confirmed plan and property that is still in the debtor's possession upon conversion. *Id.* 26a (quoting *Michael*, 699 F.3d at 319 (Roth, J., dissenting)). Because, until conversion, the debtor had enjoyed the benefits of chapter 13, the Fifth Circuit concluded that the debtor could not, after conversion, retroactively recover payments that had been made under the plan but not yet disbursed to creditors. *Id.* 27a-28a.

SUMMARY OF ARGUMENT

A chapter 13 trustee who is holding funds paid by a debtor under a confirmed plan holds those funds, in effect, as an escrow agent or a common-law trustee. No provision of the Bankruptcy Code speaks directly to the disposition of those funds upon conversion of a chapter 13 case to chapter 7. But background common-law principles provide a clear answer. Whether viewed through the lens of escrow or the law of trusts, following confirmation of a plan and the resolution of any contingencies in the plan regarding creditors' rights to payment, the trustee holds funds paid by a debtor under a plan for the benefit of creditors. The trustee is thus obligated to distribute those funds to creditors even after conversion.

That conclusion also honors the basic bargain of chapter 13, under which a debtor is permitted to keep his property, avoid repossession or foreclosure, and otherwise enjoy the benefits of chapter 13 so long as he is meeting his obligation to make payments required by the plan. It is also supported by textual provisions indicating that a debtor no longer has any residual interest in funds he has paid to a trustee with the expectation that the trustee would disburse those funds to creditors.

Petitioner's various statutory arguments are unavailing. Section 348(f) of the Bankruptcy Code makes plain that upon conversion, property of the chapter 13 estate does not become property of the chapter 7 estate. That principle is uncontroversial, but it does nothing to answer the question whether such funds should revert to the debtor or be distributed to creditors under the plan. Nor is petitioner aided by his reliance on §348(e), which states that conversion terminates the service of the chapter 13 trustee. No one contends that the trustee should keep for herself funds that have not been distributed—she must distribute them to someone, either to the debtor or to creditors. That the trustee's service is terminated, then, does nothing to answer the question presented. And §1327 is equally unhelpful to the petitioner. That section explains that upon confirmation, any property of the estate as to which the plan is silent should revert to the debtor. But funds the debtor paid to the trustee under the plan are not affected by this provision. As to the funds at issue here, the plan is far from silent—to the contrary, it expressly requires that they be paid to creditors. Section 1327's default rule that property whose disposition is not addressed in the plan reverts to the debtor on confirmation thus does not apply to the funds at issue here.

The various arguments petitioner makes from the purposes of the Bankruptcy Code also fail. In any given case, whether a trustee is holding funds that are to be, but have not yet been, distributed to creditors will be a function of happenstance. The disposition of such funds thus cannot meaningfully affect any debtor's incentive to file for chapter 13 in the first instance. Indeed, a rule that required such funds to be returned to the debtor would simply cause trustees to make more frequent distributions to creditors, at greater administrative expense. No principle of bankruptcy policy should require that result.

ARGUMENT

I. POST-CONFIRMATION, PRE-CONVERSION PAYMENTS BELONG TO CREDITORS

The text, structure, and purposes of the Bankruptcy Code—read in light of common-law principles governing arrangements where property is held by one party to be distributed to another—establish that a debtor has no remaining property interest in post-confirmation payments voluntarily made to a chapter 13 trustee under a confirmed plan. Rather, a debtor's creditors are entitled to those funds, regardless of whether they have yet been distributed. And nothing in the Bankruptcy Code retroactively alters the status of those funds upon conversion to chapter 7. Those principles decide this case.

A. Trustees Hold Post-confirmation, Pre-conversion Payments Effectively As Escrow Holders Or Common-law Trustees

No single provision in the Bankruptcy Code speaks directly to whether debtors or creditors have the right to post-confirmation, pre-conversion funds held by a

chapter 13 trustee upon conversion. *But see* Pet. Br. 18 (asserting the statutory text is "pellucid"). But "[s]tatutory construction is a holistic endeavor," *Koons Buick Pontiac GMC, Inc.* v. *Nigh*, 543 U.S. 50, 60 (2004) (internal quotation marks omitted), meaning that the Court "must ... interpret the statute as a symmetrical and coherent ... scheme, and fit, if possible, all parts into an harmonious whole," *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (internal quotation marks omitted). Read as a whole and against background common-law principles, the text and structure of chapter 13 establish that, after plan confirmation and once creditor claims are allowed or disallowed, a chapter 13 trustee effectively acts as a "disbursing agent"—specifically, an escrow holder or common-law trustee—for the purpose of making required and ministerial payments to creditors.

Several interlocking provisions of the Code support that conclusion by establishing (i) the role that a trustee plays as a disbursing agent and (ii) the contractual nature of a confirmed plan—features of chapter 13 that are necessary to understand the relative property interests of debtors and creditors in plan payments.

1. The trustee's role

As discussed above, a debtor who elects to proceed under chapter 13 is required to file a plan, 11 U.S.C. §1321, which, if confirmed, creates a contractual relationship between the debtor and creditors. Among other things, the plan "shall provide for the submission of all or such portion of future earnings ... of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan." *Id.* §1322(a)(1).

Chapter 13 strikes an express bargain between debtors and creditors: "Chapter 13 debtors are permitted to keep their property, but they must agree to a court-approved plan under which they pay creditors out of their future income" over a period of up to five years. *Hamilton* v. *Lanning*, 560 U.S. 505, 508 (2010) (citing 11 U.S.C. §§1306(b), 1321, 1322(a)(1), 1328(a)). To ensure that a debtor lives up to his end of the bargain, the Code requires the debtor to begin making plan payments within 30 days of filing the proposed plan, even if the plan has not yet been confirmed. 11 U.S.C. §1326(a)(1). With a few exceptions, pre-confirmation plan payments must be made to the chapter 13 trustee. *See id.* §1326(a)(1)(A).

The chapter 13 trustee "retain[s]" those payments until plan confirmation. 11 U.S.C. §1326(a)(2). The Code then sets forth the conditions under which such pre-confirmation funds should be paid to creditors or returned to debtors: "If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable." *Id.* On the other hand, if a plan is not confirmed, the trustee is generally required to return such payments to the debtor. *Id.*

After a plan is confirmed, the debtor often makes plan payments to the trustee, who then pays creditors according to the terms of the confirmed plan. 11 U.S.C. §1326(c). But, importantly, the Code does not prohibit a chapter 13 debtor from paying creditors directly; after confirmation, the debtor may in some circumstances serve as the disbursing agent rather than channeling his payments through the trustee. *See, e.g.*, *id.*; *see also* *In re Aberegg*, 961 F.2d 1307, 1309 (7th Cir. 1992); *In re Foster*, 670 F.2d 478, 486 (5th Cir. 1982).

Thus, after plan confirmation, "the trustee"—or in some circumstances, the debtor—"serves as the disbursing agent of all payments to creditors." 8 *Collier on Bankruptcy* ¶1326.04 (16th ed. 2014). Both the legislative history of chapter 13, *see* H.R. Rep. No. 95-595, at 430 (1977) ("After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay it, or part of it, to the trustee, who will serve as the disbursing agent under 1326."), and the Bankruptcy Rules, *see* Fed. R. Bankr. P. 3021 ("after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed"), reflect that, once the plan is confirmed, the trustee serves substantially as a conduit for transmitting funds from the debtor to creditors.

2. The contractual nature of a confirmed plan

Plan confirmation is important in an additional respect: After confirmation, the rights and responsibilities of creditors and debtors are essentially a matter of contract. "The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. §1327(a). A confirmed plan is thus "a new and binding contract ... between the debtors and their pre-confirmation creditors." *In re Murphy*, 474 F.3d 143, 148 (4th Cir. 2007) (brackets omitted); *see In re Harvey*, 213 F.3d 318, 321 (7th Cir. 2000) (similar). Indeed, even plan terms that are inconsistent with the Code are binding on all parties that receive constitutionally sufficient notice, once a confirmation order becomes final and non-appealable. *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 269-271 (2010).

In those ways, the text and structure of chapter 13 establish that a trustee serves as a disbursing agent with respect to plan payments after confirmation—an agent who is bound to carry out the terms and conditions of a contract between the debtor and his creditors.

B. Under The Common Law Of Escrow Or Trust, Creditors Are Entitled To Post-confirmation, Pre-conversion Payments

The Code does not expressly state who, as between debtors and creditors, has the right to post-confirmation payments that happen to be in the hands of a chapter 13 trustee at the time of conversion. The Code does, however, create a clear structural relationship among debtors, chapter 13 trustees, and creditors, in which a debtor voluntarily relinquishes property to the trustee to be paid to creditors. And, "except when a statutory purpose to the contrary is evident," the provisions of the Code governing that relationship should be read to be consistent with "long-established and familiar" common-law "principles." *Isbrandtsen Co.* v. *Johnson*, 343 U.S. 779, 783 (1952); *see United States* v. *Texas*, 507 U.S. 529, 534 (1993) (statute should not be read "to abrogate a common-law principle" unless it "speak[s] directly to the question addressed by the common law" (internal quotation marks omitted)).

Here, familiar common-law principles governing comparable situations in which an intermediate party holds property provided by party A to be distributed to party B establish that, with respect to post-confirmation, pre-conversion plan payments, a chapter 13 trustee effectively acts as an escrow holder or a common-law trustee. Under either framework, long settled common-law rules establish that the property at issue belongs to creditors, not the debtor.

1. Escrow holder

The role of the chapter 13 trustee is analogous to that of an escrow holder. An escrow is "money ... delivered to a person, the holder, by another and which the holder contracts to retain until the happening or non-happening of an event; if the event happens, or fails to happen ... the escrow is to be delivered to a third person; otherwise he is to return it to the depositor." *Restatement (Second) Agency* §14D cmt. a (1958); *accord Love* v. *Brown Dev. Co.*, 131 So. 144, 146 (Fla. 1930) (similar).

An escrow relationship is contractual. "The purpose of an escrow is to assure the carrying out of an obligation already contracted for, and in furtherance of that obligation the promisor deposits money ... with an escrow agent who agrees to part with it only on a specified condition." 28 *Am. Jur. 2d Escrow* §2, at 6 (2000). Thus, "[i]n order to create an escrow there must first be a binding agreement between the parties subject to it." *Restatement (Second) Agency* §14D reporter's notes.

As shown above, the Code effectively assigns to the chapter 13 trustee the role of an escrow holder. The trustee "retain[s]" plan payments before confirmation. 11 U.S.C. §1326(a)(2). After confirmation, the plan is the binding agreement under which the debtor makes payments to the trustee, to be held for creditors.

The right of a particular creditor to a particular amount, however, may remain contingent even following plan confirmation. As an initial matter, until the claims allowance process is completed, the right of any given creditor to a particular share of the payments made to the trustee is contingent on the completion of that process, through which each creditor's allowed claim becomes fixed. 11 U.S.C. §502.

Under the plan in this case, the amount to which unsecured creditors were entitled depended on the amount to be paid to secured creditors. That is, unsecured creditors would receive the balance of funds paid to the trustee after payment of secured (and priority) claims. JA30, 34-36. The plan also provided that if a mortgage creditor obtained stay relief, the trustee should not make further distribution to that secured creditor. JA32. As described above, when the mortgage lender here obtained relief from the stay, the trustee thereafter held the funds otherwise dedicated to repaying the mortgage lender's arrearage, to provide the debtor the opportunity to negotiate a modification.

On November 21, 2011, the debtor provided public notice of his intent to convert the case to chapter 7. Any outstanding contingencies were thus removed. At that point, at the latest, the trustee had a legal obligation to distribute undisbursed funds to creditors under the plan. *See* 11 U.S.C. §1326(a), (c); JA27 ("From the monthly payments described above, the Chapter 13 Trustee shall pay the following allowed claims in the manner and amounts specified.").

Understanding the chapter 13 trustee as common-law escrow holder resolves the question presented. Under the common law, if and when "the event happens which is to complete the transaction, the escrow holder becomes the agent in possession of the property or the holder of the title for the new owner." *Restatement (Second) Agency* §14D cmt. b, at 67. The escrow holder is under a mandatory duty to deliver the property to the new owner. *See* 28 *Am. Jur. 2d Escrow* §28, at 27-28 ("[U]pon the performance of the condition or the happening of the event stipulated in the escrow agreement, it is the duty of the depositary to deliver to the grantee or obligee the instrument deposited in the es-

crow. The depositary, being as much the agent of the grantor as of the grantee of a deed held by him or her, is as much bound to deliver the deed on the performance of the specified condition or the happening of the specified event as he or she is bound to withhold it until the performance or the happening of the event.") (internal footnotes omitted). "[A]fter performance of the condition, the grantee acquires title and is entitled to delivery of the instrument." 30A *C.J.S. Escrows* §23, at 639 (2007).

Thus, under the common law, when stock is placed in escrow by a seller, the purchaser's satisfaction of the conditions of the escrow means that "the escrow holder becomes the agent of the purchaser and the seller loses his or her property interest in the stock." 17 *Williston on Contracts* §51:45, at 738 (4th ed. 2000); *see id.* (noting that, unless the parties intend otherwise, "[t]itle to stock deposited in escrow" "pass[es]" once "the conditions in the agreement are performed").

Those principles are dispositive here. Under chapter 13, once a plan is confirmed, the bankruptcy court has resolved creditors' claims, and any other contingencies provided for by the plan have been satisfied, the conditions of the escrow are met. At that point, consistent with the principles discussed above, the debtor loses any remaining interest in the property; creditors become the "new owners" of the escrowed property; and the trustee becomes an agent of the creditors required to deliver that property to them. And while the court of appeals reached a contrary conclusion here, Pet. App. 17a, multiple bankruptcy courts, while not expressly invoking escrow analysis, have held that once a plan has been confirmed, creditors have a vested interest in payments to the chapter 13 trustee made un-

der the plan.[4] Common-law escrow principles explain why that is so, and conclusively refute petitioner's bare assertion that "a Chapter 13 creditor's interests do not vest until the monies are distributed." Pet. Br. 33 (internal alterations and quotation marks omitted).

2. Common-law trustee

It is also possible to conceive of the chapter 13 trustee as holding post-confirmation, pre-conversion payments in trust as a common-law trustee for the benefit of creditors.[5] Viewed that way, the result would be the

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[4] *In re Smith*, 511 B.R. 612, 620 (Bankr. W.D. Mo. 2014) ("the creditor's interest in Chapter 13 plan payments vest[s] when each payment is made and, upon conversion of the case to Chapter 7, any undistributed payments ... must be disbursed according to the terms of the confirmed plan"); *In re Pegues*, 266 B.R. 328, 334-336 (Bankr. D. Md. 2001) (following authority concluding that rights to payments made under the plan vest in the creditors); *In re Hardin*, 200 B.R. 312, 313-314 (Bankr. E.D. Ky. 1996) (§348(f) did not alter case law holding that "confirmation vests rights in the creditors" to plan payments); *In re Halpenny*, 125 B.R. 814, 816 (Bankr. D. Haw. 1991) ("when a debtor voluntarily pays funds to the Chapter 13 Trustee pursuant to the terms of a confirmed plan, the creditors have a vested right to receive the funds at the time the Trustee receives the funds"); *In re Galloway*, 134 B.R. 602, 603 (Bankr. W.D. Ky. 1991) ("creditors have a vested right to receive ... payments pursuant to the plan"); *In re Burns*, 90 B.R. 301, 304-305 (Bankr. S.D. Ohio 1988) ("when debtors have voluntarily paid funds to the Chapter 13 Trustee pursuant to the terms of a confirmed Plan, the creditors' right to receive funds pursuant to the confirmed plan vests *at the time the trustee receives the funds*"); *In re Redick*, 81 B.R. 881, 887 (Bankr. E.D. Mich. 1987) ("once the debtor has voluntarily parted with his wages and delivered them to the custody of the trustee in performance of a voluntary Chapter 13 plan ... the creditors have a vested right to receive those payments").

[5] Under the common law, escrow and trust bear similarities, the primary difference being the predominantly contractual nature of escrow. *See* 28 *Am. Jur. 2d Escrow* §1, at 6 ("An escrow agree-

same because a common-law trustee's wind-up authority upon termination includes the authority, indeed, the duty, to satisfy unpaid trust obligations, including payments that should have been paid out to beneficiaries before termination (such as the undistributed plan payments at issue here).

Read together, chapter 13 and the confirmed plan impose a duty on the trustee to hold post-confirmation, pre-conversion payments for the benefit of creditors and to distribute those amounts to creditors under the plan. *See* 11 U.S.C. §1326(a), (c); JA27 ("From the monthly payments described above, the Chapter 13 Trustee shall pay the following allowed claims in the manner and amounts specified."). Those statutory and contractual mandates could easily be viewed as creating a trust relationship, with the debtor as settlor and the chapter 13 trustee holding legal title for the benefit of creditors. *See Restatement (Second) Trusts* §2, at 6 (1959) ("[a] trust ... is a fiduciary relationship with respect to the property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another").

Indeed, many lower courts have held that a chapter 13 trustee has the duties of a common-law trustee to distribute the assets of the trust to creditors, as beneficiaries. For example, the bankruptcy court in *In re Waugh*, 82 B.R. 394, 398 (Bankr. W.D. Pa. 1988), explained that "11 U.S.C. § 1326 treats property received

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ment, while imposing a fiduciary relationship, and assuming some of the characteristics of a trust, is in essence a contractual undertaking to assure the carrying out of obligations already contracted for[.]"). In that respect, once a chapter 13 plan is confirmed, an escrow model provides the most applicable common-law analogy, though, as explained in the text, the result is the same if chapter 13 is viewed through the lens of the common law of trusts.

by the chapter 13 trustee pursuant to a confirmed chapter 13 plan as a trust for beneficiaries of the plan." *See also id.* at 400 (holding that §1326 "creates the condition of a trust"). Similarly, the court in *In re Rutenbeck*, 78 B.R. 912, 913 (Bankr. E.D. Wis. 1987), explained that "where a chapter 13 trustee is holding funds paid by the debtor in accordance with a confirmed plan, and the case is ... converted to another chapter, the undistributed funds ought to be treated as trust funds for the benefit of the creditors under the confirmed plan."

Under a common-law trustee model, creditors, not debtors, are entitled to post-confirmation, pre-conversion payments held by a chapter 13 trustee. "[W]hen [a] trust is terminated in any way," the trustee "has power to perform such acts as are necessary to the winding up of the trust and the distribution of the trust property as are expressly given or reasonably implied from the trust instrument." Bogert et al., *The Law of Trusts and Trustees* §1010, at 462-464 (updated 2014); *see* Uniform Trust Code §816(26) ("on termination of the trust," the trustee may "exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it"); *Restatement (Third) Trusts* §89, at 271 (2007) ("The powers of a trustee do not end on the trust's termination date but may be exercised as appropriate to the performance of the trustee's duties in winding up administration, including making distribution, in a manner consistent with the purposes of the trust and the interests of the beneficiaries.").

A trustee's wind-up powers include the authority—indeed, the "duty"—to "determine and satisfy trust obligations." *Restatement (Third) Trusts* §89 cmt. c, at 272. The concept of "obligations" is "comprehensive" and includes, for example, "unpaid 'income' owed to the

estate of a deceased life-income beneficiary." *Id.* reporter's notes, cmts. b&c, at 279. The distributions made by the trustee here were "obligations" of the trust: The trustee received funds while a binding contract was in effect requiring the payment of those funds to creditors. *See* JA27-31 (providing for mandatory payment of priority claims, secured claims, and unsecured claims; stating that monthly payments by petitioner "shall" be paid to creditors).

Such funds are directly analogous to unpaid income that should have been paid to a beneficiary during the life of a trust. *See, e.g., Restatement (Second) Trusts* §235A (income "received by the trustee or ... accrued prior to the death of the life beneficiary" is payable to the estate of life beneficiary, even where trust directs payment of principal to another upon life beneficiary's death); *In re Hansen's Trust*, 739 N.W.2d 170, 181 (Neb. 2007) ("the general common-law rule is that a beneficiary's estate may recover income of the trust, which is accrued and payable at the time of the beneficiary's death but has not been paid over, unless the trustee had uncontrolled discretion whether to make distributions of income"). Thus, viewing a chapter 13 trustee as holding undistributed post-confirmation, pre-conversion payments in trust as a common-law trustee for creditors compels the conclusion that the trustee must distribute those funds to creditors.

C. The Text, Structure, And Purposes Of The Bankruptcy Code Reinforce The View That Post-confirmation, Pre-conversion Plan Payments Belong To Creditors

For the reasons set forth above, this Court can resolve the question presented by interpreting the role of the chapter 13 trustee consistently with its common-law

antecedents. Additional considerations of statutory text, structure, and purpose, however, bolster the conclusion that post-confirmation, pre-conversion funds held by a chapter 13 trustee belong to creditors. *See Hall* v. *United States*, 132 S. Ct. 1882, 1889 (2012) (relying on considerations of "statutory structure" in interpreting Bankruptcy Code); *Ransom* v. *FIA Card Servs., N.A.*, 562 U.S. 61, 71 (2011) (relying on considerations of statutory "purpose" in interpreting Bankruptcy Code).

First, that conclusion best honors the basic bargain struck by chapter 13. A *quid pro quo* between debtors and creditors lies at the heart of chapter 13: "Chapter 13 debtors are permitted to keep their property, but they must agree to a court-approved plan under which they pay creditors out of their future income." *Hamilton*, 560 U.S. at 508. Indeed, debtors are expressly required, unless the creditors agree to different treatment, to pay *all* of their projected disposable income to creditors to remain in chapter 13. In exchange for those payments, a debtor is, among other things, "permitted to stave off foreclosure and cure [his] mortgage default, retain the use of his automobile, and enjoy the automatic stay." *In re Michael*, 699 F.3d 305, 319 (3d Cir. 2012) (Roth, J., dissenting); *see id.* at 320 n.7 (listing "varied" benefits a debtor receives under a chapter 13 plan).

To be sure, a debtor has the right to convert a case from chapter 13 to chapter 7, *see* 11 U.S.C. §1307(a), but conversion cannot alter retroactively the status of funds that a debtor has *already* paid to a trustee for disbursement to creditors. Those funds were paid at a time when the debtor enjoyed the benefits of chapter 13, and it would upset the bargain at the heart of chapter 13 to return those payments to the debtor simply because, for administrative or other reasons, they had not yet been distributed. *See, e.g.*, *In re Bell*,

248 B.R. 236, 239-240 (Bankr. W.D.N.Y. 2000) (conversion does "not retroactively revoke the intent [the debtor] had at the time when [he or she was] operating under a confirmed plan and voluntarily chose to make the required plan payments to enable [the debtor] to continue to enjoy the ongoing benefits of that plan"); *accord O'Quinn* v. *Brewer*, 143 B.R. 408, 413 (Bankr. S.D. Miss. 1992) (similar). This is not simply a "consideration[] of fairness," as the Fifth Circuit held (though it is that, too). Pet. App. 26. Rather, it is a powerful structural reason why creditors have the right to post-confirmation, pre-conversion funds.[6]

Indeed, the structure of the Code supports the conclusion that conversion does not operate retroactively in a related respect. Nothing in the Code expressly or impliedly gives the debtor a right to "claw back" plan payments that have already been disbursed to creditors before conversion, and petitioner has never argued otherwise. There is no reason for treating differently plan payments that have been made to a chapter 13 trustee but that, for administrative reasons, or simply due to the happenstance of the timing of payments, have yet to be disbursed to creditors. In either case, the debtor has voluntarily relinquished funds for the purpose of satisfying debts to creditors under the terms of a confirmed plan. And there is no reason to distinguish between

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[6] Petitioner insists that there is no such *quid pro quo* here because "by the time petitioner converted, the benefits offered by attempting to proceed in Chapter 13 had evaporated." Pet. Br. 45. But petitioner did receive the benefit of the opportunity to proceed under chapter 13; the price paid for that benefit included pre-conversion plan payments. One who invests in a business venture that ultimately fails cannot demand a return of the investment if the anticipated benefit of the venture "evaporates" (at least, absent some contractual provision to the contrary). The same is true here.

funds en route to creditors via a chapter 13 trustee and those that are already in creditors' hands.

Second, the conclusion that creditors have the right to post-confirmation, pre-conversion payments held by a chapter 13 trustee accords with Congress's decision to permit debtors to make plan payments directly to creditors, bypassing the role of the trustee as disbursing agent. Chapter 13 provides that a plan or confirmation order may opt out of the presumption that "the trustee shall make payments to creditors under the plan." 11 U.S.C. §1326(c). That statutory language thus "permits a debtor to act as disbursing agent" to creditors, subject to approval of a bankruptcy court. *Foster*, 670 F.2d at 486.

When a debtor is making plan payments directly to creditors, there can be no question that, once the debtor voluntarily relinquishes control of the funds, they become the creditors' property. Again, nothing in the Code suggests that debtors may "claw back" plan payments already in the hands of creditors. There is no sensible reason that creditors' entitlement to plan payments should turn on whether those payments are made to creditors directly or disbursed by the trustee. Either way, the legally significant moment is the point at which the debtor voluntarily surrenders property to make a plan payment.

Third, petitioner's rule—that post-confirmation, pre-conversion payments held by a trustee but not yet distributed belong to debtors—would require the anomalous result that creditors' ability to recover plan payments would turn on how expeditiously a trustee makes distributions to creditors and the particular distribution practices of the trustee. *See* Miller & Iskin, *Clarifying the Mysterious Chapter 13 Disbursement*

Process, 33 ABI J. 30, 98 (2014) ("the date of monthly disbursement may float between different trusteeships and some procedures may vary from office to office"). There is simply no logical reason to think that "[t]he speed by which the chapter 13 trustee makes distribution should ... determine the rights of creditors and debtors in the funds." *Waugh*, 82 B.R. at 400.

To the contrary, that result would create needless and substantial administrative hardships. As the Third Circuit recognized, the predictable creditor response to petitioner's rule would be to "request more frequent distributions from the Chapter 13 trustee," *Michael*, 699 F.3d at 316-317, including demands for daily distributions. But "daily distribution would create an administrative nightmare: trustee staff expenses would skyrocket and *de minimis pro rata* distributions to a multitude of creditors would result in huge bank processing expenses." *In re Redick*, 81 B.R. 881, 886 (Bankr. E.D. Mich. 1987); *cf. Richlin Sec. Serv. Co.* v. *Chertoff*, 553 U.S. 571, 588-589 (2008) (rejecting an "interpretation of [a] statute" that would raise questions of "practical feasibility"; explaining that "[i]t strains credulity that Congress" would replace a "workable" system with an administratively costly and burdensome framework).

Fourth, there are additional textual indications throughout chapter 13 that Congress contemplated that post-confirmation, pre-conversion payments belong to creditors, not debtors.

To start, Congress mandated that, "as soon as practicable after *completion by the debtor of all payments under the plan* ... the court shall grant the debtor a discharge of all debts." 11 U.S.C. §1328(a); *see also* JA27 ("the plan shall be deemed to have been completed when the Chapter 13 Trustee has received from or on

behalf of the Debtor(s) an amount" sufficient to satisfy the terms of the plan). The italicized language "clearly refers to payments made by the debtor to the trustee," 8 *Collier on Bankruptcy* ¶1328.02, not distributions from the trustee to creditors. Similarly, Congress provided that a plan may be modified any time "before the completion of payments under such plan." 11 U.S.C. §1329(a). Once again, that deadline refers to payments by the debtor to the trustee, not distributions by the trustee to creditors. *See* 8 *Collier on Bankruptcy* ¶1329.08 ("[t]he term 'payments under such plan' in this section has generally been held to mean payments made by the debtor, rather than payments made by the trustee to creditors").

Those statutory provisions demonstrate that it is the time at which the debtor pays the trustee that is legally significant. That is when the debtor's obligations are complete and when it makes sense to discharge a debt or to bar plan modifications. If Congress believed that a debtor retained an interest in funds paid to a trustee but not yet disbursed, it would have been more than a little strange to tie the time of discharge or the deadline for plan modification to the debtor's payment to the trustee rather than to the trustee's disbursement to creditors.

Finally, §1326(a)(2) reinforces the conclusion that post-confirmation, pre-conversion payments belong to creditors. As explained above, that section provides that, "[i]f a plan is not confirmed, the trustee *shall return* any such payments previously paid and not yet due and owing to creditors ... *to the debtor*." 11 U.S.C. §1326(a)(2) (emphasis added). That provision shows that Congress knows how to specify when and under what circumstances payments should be "return[ed]" to debtors. The absence of any similar "shall return" man-

date with respect to post-confirmation, pre-conversion payments upon conversion confirms that Congress did not intend or anticipate that result. *See Sebelius* v. *Cloer*, 133 S. Ct. 1886, 1894 (2013) ("where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion" (internal alterations and quotation marks omitted)).

II. Petitioner's Interpretation Of The Code Is Unconvincing

Petitioner's contrary arguments are insufficient to overcome the weight of the statutory analysis set forth above, which establishes that post-confirmation, pre-conversion plan payments held by a chapter 13 trustee but not yet distributed belong to creditors.

A. Petitioner's Statutory Arguments Are Wide Of The Mark

1. Section 348(f)

Petitioner's lead argument is based on §348(f), which provides that "when a case under chapter 13 of this title is converted to a case under another chapter under this title ... property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the [chapter 13] petition, that remains in the possession of or is under the control of the debtor on the date of conversion." 11 U.S.C. §348(f)(1)(A). According to petitioner, §348(f) "conclusively resolves the question presented" because it shows that "Congress intended that post-petition property of the estate in the Chapter 13 case should not be made available to creditors in the converted case." Pet.

Br. 27. In fact, §348(f) has no bearing on the question presented, for two reasons.

First, §348(f) speaks only to whether property acquired after a chapter 13 petition is filed should be included in the "estate" of a converted chapter 7 case. As petitioner's lengthy detour through the legislative history establishes (Pet. Br. 23-27), that was an important question before 1994 because courts had split on whether an asset acquired by a debtor after the commencement of a chapter 13 case (such as an inherited farm or a tort claim) should be included in the chapter 7 estate upon conversion and thus subject to liquidation. But §348(f) is beside the point here. No one is arguing that post-confirmation, pre-conversion payments in the hands of the trustee at the time of conversion are part of the *chapter 7 estate*. Accordingly, that §348(f) excludes postpetition property from "the post-conversion estate going forward under Chapter 7" (Pet. Br. 20) hardly "end[s]" "this case" (*id.* 21). The question here is whether post-confirmation, pre-conversion payments should be distributed to creditors as required by the chapter 13 plan or returned to the debtor, a question that §348(f) simply does not address.

The legislative history of §348(f), far from helping petitioner's case (Pet. Br. 23-27), confirms why §348(f) does not answer the question presented. As noted above, prior to 1994, courts had divided on whether property a debtor acquired after filing a chapter 13 petition would become property of the chapter 7 estate upon conversion. In *In re Lybrook*, 951 F.2d 136, 137-138 (7th Cir. 1991), the Seventh Circuit held that farm land inherited by a debtor after filing for chapter 13 should become part of the chapter 7 estate upon conversion. That case had nothing to do with undistributed plan payments made to a trustee under a confirmed

chapter 13 plan. The principal case on the other side of the divide was *In re Bobroff*, 766 F.2d 797 (3d Cir. 1985). There, the Third Circuit held that a debtor's tort action that accrued after the filing of a chapter 13 petition did not become part of the chapter 7 estate upon conversion. *Id.* at 803. Once again, that case had nothing to do with undistributed plan payments made to a trustee under a confirmed chapter 13 plan.

In enacting §348(f), Congress resolved this "split in the case law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7." H.R. Rep. No. 103-835, at 57 (1994). Congress was concerned that the Seventh Circuit's rule would "create a serious disincentive to chapter 13 filings" by holding open the prospect that assets acquired after the chapter 13 filing—and that thus would not have been liquidated had the debtor filed a chapter 7 petition to begin with—would be liquidated in the converted chapter 7 case. *Id.* It therefore amended the Code to "overrule[] the holding in cases such as [*Lybrook*]" and to "adopt[] the reasoning of [*Bobroff*]." *Id.* Congress's decision that postpetition inherited farm land (*Lybrook*) or postpetition tort actions (*Bobroff*) should not become part of the chapter 7 estate says nothing about the narrow question presented here—whether postconfirmation, pre-conversion plan payments held by a chapter 13 trustee but not yet administratively distributed belong to chapter 13 creditors or debtors.[7]

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[7] *Resendez* v. *Lindquist*, 691 F.2d 397 (8th Cir. 1982), adds nothing to petitioner's argument. Setting aside the lack of any evidence that Congress had this decision in mind in enacting §348(f), *Resendez* is irrelevant. *Resendez* assumed (because no party appears to have contested) that postpetition property became part of the chapter 7 estate. *Id.* at 398. The subsequent enactment of §348(f) rejected that assumption. *Resendez* went on to

For the same reason, §348(f)'s bad-faith exception does not assist the petitioner. *See* Pet. Br. 21-23. That provision makes clear that, if a debtor converts a case in bad faith, the default established by §348(f) is flipped and postpetition assets do become part of the chapter 7 estate. Petitioner's reliance on that exception is flawed for the same reason his reliance on the default rule set by §348(f) is flawed: This case is neither about the scope of the chapter 7 estate nor the treatment of postpetition wages generally, but rather about the proper distribution of payments a debtor voluntarily made to a chapter 13 trustee for purposes of distribution to creditors. Petitioner thus is wrong in arguing that the Fifth Circuit's decision "inexplicably treats sinners and saints alike" (Pet. Br. 22). If petitioner had converted in bad faith, all of his postpetition assets and earnings would be part of the chapter 7 estate. Distributing post-confirmation, pre-conversion funds held by the trustee to chapter 13 creditors—the only question presented here—thus does not treat petitioner as a "sinner" but only honors petitioner's contractual obligation to make monthly payments to the trustee for distribution to creditors.

Second, §348(f) is inapplicable here because the statute by its terms applies only to "property of the estate." But the funds at issue here—post-confirmation payments made to a trustee for the purpose of distribution to creditors—are not "property of the estate." Petitioner's contrary argument relies on the view that §1306(a) classifies his "earnings" as property of the es-

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address whether payments made to a chapter 13 trustee could be exempted in the chapter 7 case. It held that they could not be, relying on the debtor's voluntary decision to relinquish his interest in those funds. *Id.* at 399. Nothing in §348(f) addresses in any way that aspect of the *Resendez* holding.

tate. But once a portion of a debtor's "earnings" have been paid to a trustee pursuant to a confirmed plan, there is no basis for saying those funds remain the debtor's "earnings." *See Michael*, 699 F.3d at 319 ("[W]e are not dealing simply with wages here but with that portion of the wages that had been ... paid to the trustee for distribution to the creditors. I maintain that there is a crucial difference.") (Roth, J., dissenting). Certainly, as a matter of plain English or common sense, no one would say that money in the possession of a bank that could be traced to a mortgage payment made by a debtor from his earnings remain the debtor's "earnings" in the hands of the bank. *Cf. Clark* v. *Rameker*, 134 S. Ct. 2242, 2248 (2014) ("In ordinary usage, to speak of a person's 'retirement funds' implies that the funds are currently in an account set aside for retirement, not that they were set aside for that purpose at some prior date by an entirely different person. Under petitioners' contrary logic, if an individual withdraws money from a traditional IRA and gives it to a friend who then deposits it into a checking account, that money should be forever deemed 'retirement funds' because it was originally set aside for retirement. That is plainly incorrect.").

The same is true here. After confirmation, a debtor's voluntary transfer of possession and control of plan payments to a chapter 13 trustee eliminates any basis for calling those funds a debtor's "earnings." They are instead funds that are to be paid to creditors under the confirmed plan. And because they are not "earnings," there is no basis for classifying the funds at issue here as property of the chapter 13 estate. Accordingly,

nothing in §348(f) suggests that such funds should be returned to the debtor upon conversion.[8]

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[8] The scope of the chapter 13 bankruptcy estate has been the focus of much debate and disagreement. One bankruptcy scholar observed in 2009 that "[t]hirty years into the life of the Bankruptcy Code, the courts still have no coherent theory of chapter 13." Carlson, *The Chapter 13 Estate and Its Discontents*, 17 Am. Bankr. Inst. L. Rev. 233 (2009). The difficulty arises from the apparent tension between two provisions of chapter 13—§1306 and §1327. Section 1306 states that "[p]roperty of the estate includes ... earnings from services performed by the debtor after commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first." 11 U.S.C. §1306(a). Section 1327(b), however, states that "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all property of the estate in the debtor." *Id.* §1327(b). The analytic difficulty is reconciling the apparent inclusion in §1306(a) of post-confirmation earnings as property of the estate with §1327(b)'s directive that upon confirmation, all estate property vests in the debtor.

Courts have employed several different approaches to reconciling these provisions. Some have concluded that unless the plan provides otherwise, the estate terminates upon confirmation when all estate property vests in the debtor; some have concluded that the estate is preserved until the end of the case notwithstanding §1327(b)'s vesting provision; and some have attempted to craft intermediate approaches. *See, e.g.*, *In re Jones*, 420 B.R. 506, 512-516 (B.A.P. 9th Cir. 2009) (estate termination), *aff'd on other grounds* 657 F.3d 921 (9th Cir. 2011); *In re Heath*, 115 F.3d 521, 522-524 (7th Cir. 1997) (Posner, J.) (similar); *In re Fisher*, 198 B.R. 721, 733 (Bankr. N.D. Ill. 1996) (estate preservation); *Barbosa* v. *Solomon*, 235 F.3d 31, 35-37 (1st Cir. 2000) (intermediate approach). This question is fundamental to the structure of chapter 13 and the scope of the bankruptcy court's post-confirmation jurisdiction and authority. It is not presented here, because the plan provides that estate property does not revest in the debtor on confirmation. In resolving the question presented, however, the Court should take care not to pass inadvertently on this important issue that is likely to be presented in a future case.

2. Section 348(e)

In addition to §348(f), petitioner relies heavily on §348(e), which provides that "[c]onversion of a case ... terminates the service of any trustee ... that is serving in the case before such a conversion." 11 U.S.C. §348(e). Petitioner contends that §348(e) "incapacitates a Chapter 13 trustee from ... continuing to distribute a debtor's post-petition wages." Pet. Br. 27; *see* NACBA Br. 12-16. But §348(e) does no such thing.

Petitioner acknowledges that, upon conversion, a chapter 13 trustee must have the authority to perform "ancillary duties to clean-up and finalize the administration of the estate." Pet. Br. 29 (internal quotation marks omitted). For the reasons explained above, one of those administrative duties is the distribution of post-confirmation, pre-conversion payments to creditors. Under either an escrow-holder framework or a common-law trustee model, the chapter 13 trustee has the authority, and is obligated, to distribute those funds to creditors. *See* Part I.A, above.[9] In short, although petitioner (no fewer than seven times in his brief) faults lower courts for suggesting that §348(e) cannot be in-

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[9] Petitioner's argument (at 29) based on Bankruptcy Rule 1019(4) is difficult to comprehend. That rule provides that, "[a]fter qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession or trustee previously acting in the chapter 11, 12, or 13 case shall, forthwith ... turn over to the chapter 7 trustee all records and property of the estate in the possession or control of the debtor in possession or trustee." In view of §348(f), that rule *cannot* mean that a chapter 13 trustee must turn over the entire chapter 13 estate to the chapter 7 trustee, as petitioner suggests. Instead, the rule can only be read to apply to "property of the estate" that belongs in the chapter 7 estate. So understood, the rule is silent as to what property should be included in the chapter 7 estate and it says nothing about what to do with undistributed post-confirmation, pre-conversion plan payments.

terpreted "too literally" (Br. 3, 13, 14, 18, 28), petitioner's own theory depends on the trustee retaining the authority after conversion to pay money to the rightful recipient.

Put differently, the parties agree that a chapter 13 trustee, although holding undistributed funds, may not keep those funds herself upon conversion. The parties also necessarily agree that a trustee retains the authority to distribute those funds to the person legally entitled to receive them. Under either petitioner's or respondent's reading, then, it is a significant overstatement to say that §348(e) "incapacitates" the trustee's authority to distribute post-confirmation, pre-conversion payments. *See* Pet. App. 10a ("Harris' argument is obviously not intended to be taken at face value; if the trustee has 'no authority to disburse funds,' she would be unable to return the funds to Harris as he requests"). The only question is: Who has the legal right to receive the funds held by the chapter 13 trustee, the debtor or creditors? And §348(e) sheds absolutely no light on *that* question.[10]

3. Section 1327(b)

Finally, petitioner argues that §1327(b) and the confirmation order had the effect of revesting "all property of the estate under Chapter 13 ... in petitioner when he

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[10] Petitioner's amici agree that the "trustee must hand over the funds to someone; she does not get to keep them for herself." NACBA Br. 15. But they argue that distributing funds to the debtor is "different in kind" from distributing funds to the creditors because the former "has no effect on the debtor's and creditor's respective substantive rights." *Id.* That argument assumes the answer it seeks to support. For the reasons set forth above in Part I.A, creditors *do* have a "substantive right[]" to post-confirmation, pre-conversion payments. Distributing those payments to debtors thus *does* affect the substantive rights of creditors.

converted his case to Chapter 7." Pet. Br. 31; *see* NACBA Br. 16-17. According to petitioner, this revesting "gives the debtor an unambiguous, vested interest in post-petition wages held by a Chapter 13 trustee at conversion." Pet. Br. 32. In fact, neither §1327(b) nor the confirmation order supports that conclusion.

As an initial matter, for the reasons described above, *see supra* pp. 35-37, the funds at issue are not property of the estate. The timing of any revesting of estate property is thus irrelevant.

In any event, §1327(b) simply establishes a statutory default with respect to revesting. It provides that "except as otherwise provided in the plan or the order confirming the plan," confirmation vests property of the estate in the debtor. 11 U.S.C. §1327(b). The purpose of this provision is to return to the debtor title to the property in the debtor's possession that, prior to confirmation, the debtor was holding for the benefit of the estate. By providing a default rule under which property revests in the debtor *except as provided in the plan or confirmation order*, the Bankruptcy Code necessarily contemplates that property dealt with in the plan will *not* revest in the debtor.

Section 1327 therefore has nothing to do with payments already remitted to the trustee, which are the express subject of the plan. As the Fifth Circuit correctly held, the plan here excludes funds in the hands of the trustee from revesting in the debtor by granting creditors an express contractual entitlement to payments made by the debtor on account of allowed claims. Pet. App. 20a. The plan could hardly be clearer on this point: "Allowed claims shall be paid to the holders thereof in accordance with the terms hereof. From the monthly payments described above, the Chapter 13

Trustee shall pay the following allowed claims in the manner and amounts specified." JA27; *see* JA28-31 (¶¶A-D). As discussed above, under the terms of the plan, the trustee in effect acted as an escrow agent, meaning that the creditors had a property interest in payments made by the debtor to which the plan entitled them. The plan thus expressly excluded such payments from revesting in the debtor. "'To the extent that the confirmed plan provides for payment from the debtor's future earnings and the debtor actually makes payment to the trustee pursuant to that plan, the debtor is not entitled to possession nor is the debtor vested with title to such payments. Sections 1306(b) and 1327(b) specifically except such payments from their provisions since the debtor's right of possession and vesting of title is limited to all sums and property not otherwise provided for in the confirmed plan or confirmation order.'" Pet. App. 20a.

Nothing in the confirmation order affects this analysis. The confirmation order states that "[s]uch property as may revest in the Debtor shall so revest only upon further Order of the Court or upon dismissal, conversion, or discharge." JA48. That language does not address the substantive rights of the debtor or his creditors upon conversion because it is silent regarding *what* property shall revest in the debtor upon conversion.

B. Petitioner's Purpose-Based Arguments Are Misplaced

Petitioner also argues that distributing post-confirmation, pre-conversion payments held by a trustee to creditors upon conversion would "[c]reate [p]erverse [i]ncentives," at odds with the purposes of the Bankruptcy Code. Pet. Br. 35. Petitioner is wrong.

First, petitioner insists that distributing post-confirmation, pre-conversion payments to creditors upon conversion would create a "clear disincentive to proceeding under Chapter 13 in the first place." Pet. Br. 38. That is incorrect. As explained above, Congress's reason for enacting §348(f) was that debtors might avoid chapter 13 if they were concerned that assets acquired after filing the petition, such as lottery winnings or an inherited farm, might become property of the chapter 7 estate upon conversion. The potential disincentive to attempt chapter 13 in that case is easy to see, as the Fifth Circuit recognized. *See* Pet. App. 23a-24a.

Here, by contrast, the question is whether money that a debtor has voluntarily remitted to a chapter 13 trustee under a confirmed plan (that the debtor himself proposed) for payment to creditors should, in fact, be paid to creditors upon conversion or, instead, returned to the debtor. The notion that this consideration would influence any debtor in choosing between chapters 13 and 7 is fanciful. Among other things, a debtor would have no way of knowing when filing a petition if a trustee would ever accumulate such funds. That circumstance arises essentially as a matter of happenstance. It would be impossible to predict at the time of filing. And a debtor would certainly have no way of knowing how long a trustee might hold accumulated funds or how much money the trustee would hold. The Fifth Circuit was thus correct, if not guilty of understatement, in concluding that "it is unlikely that a debtor would be meaningfully deterred" from pursuing chapter 13 "by the knowledge that payments made under a confirmed Chapter 13 plan will not be returned to him if he chooses to convert to Chapter 7." Pet. App. 24a; *see Michael*, 699 F.3d at 321 (Roth, J., dissenting)

("[M]y interpretation ... will not discourage voluntary debt repayment under Chapter 13. It merely requires debtors to honor their obligations to creditors as was agreed under a confirmed plan.").[11]

Beyond that, even if petitioner were correct that the possibility of recovering funds already in the hands of a chapter 13 trustee but not yet distributed would affect a debtor's choice between chapters 13 and 7, petitioner's rule would not affect that incentive. As explained above, the inevitable effect of petitioner's rule would be that chapter 13 trustees would make more frequent distributions to creditors. *See supra* pp. 29-30. Thus, even were petitioner to prevail, it would make no significant difference in the amount of funds available to a debtor upon conversion and thus would not affect the incentive to pursue chapter 13.

Second, petitioner argues that distributing post-confirmation, pre-conversion payments held by a trustee to creditors upon conversion "would create an anomaly" in light of §349's dismissal provision. Pet. Br. 39. Petitioner maintains that "[a] debtor who *dismisses* a Chapter 13 case is plainly entitled to any post-petition wages held by the Chapter 13 trustee" and that "[t]here is no logical reason for a different rule to govern conversions." *Id.* 39-40.

But because conversion is different from dismissal, treating them differently creates no anomaly. When a chapter 13 case is dismissed, the debtor does not receive a discharge. As a result, the creditors remain free to pursue state-law remedies for the recovery of

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[11] The fact that more than $4,000 accumulated in this case (Pet. Br. 38-39) does not help petitioner's argument because that is something that petitioner knows now only after the fact, not when a petition is filed.

their debts—which include their right to obtain a judgment and attach any funds that might have been returned to the debtor. *See, e.g., In re Williams*, 246 B.R. 591, 596-597 (B.A.P. 8th Cir. 1999) (per curiam) ("upon dismissal of the chapter 13 case, [a creditor] ha[s] the same rights and state law remedies with regard to the property as existed prior to the filing. Since no discharge was granted, [the creditor] may enforce these rights against the debtor personally"). Any money returned to debtors after dismissal would thus remain available to creditors outside bankruptcy.

Conversion operates differently. Creditors in a chapter 7 case have no entitlement to the debtor's postpetition assets. 11 U.S.C. §348(f). Assuming the debtor obtains a chapter 7 discharge, *id.* §727, assets outside the chapter 7 estate—including property acquired after the filing of the chapter 13 petition—could never be reached by prepetition creditors. Accordingly, it is petitioner's reading of chapter 13 that would create an anomaly between conversion and dismissal by depriving creditors in the former situation but not the latter of any ability to secure undistributed funds paid to and held by a chapter 13 trustee to satisfy prepetition debts.[12]

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[12] Petitioner also suggests that "a debtor who obtained undistributed funds from the trustee upon dismissal, and who met the eligibility requirements, could then file a new petition under Chapter 7" and then claim an exemption for those funds under §522(d). Pet. Br. 41. But petitioner's acknowledgment that a debtor must satisfy "eligibility requirements" is significant. Bad-faith gamesmanship disqualifies a debtor from converting a case from chapter 13 to chapter 7; such a debtor would "not qualify as a debtor" under 11 U.S.C. §109(e) as he is not a "member of the class of 'honest but unfortunate debtor[s]' that the bankruptcy laws were enacted to protect." *Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 373 (2007) (quoting *Grogan* v. *Garner*, 498 U.S. 279, 287 (1991)). That

Third, petitioner maintains that debtors have a superior claim to post-confirmation, pre-conversion funds. *See* Pet. Br. 42-46. According to petitioner, this result flows from the principle that "creditors should ... be put back in precisely the same position as they would have been had the debtor never sought to repay his debts by filing under Chapter 13." *Id.* 43 (internal quotation marks omitted). But there is no such principle in chapter 13, as is evidenced by the fact that chapter 13 does not require creditors to return payments to debtors at the time of the conversion. There is no reason to treat undistributed payments held by a chapter 13 trustee differently. *See supra* pp. 28-29.

Petitioner separately argues that "[i]f petitioner's unsecured creditors had believed they were entitled to accumulating funds *during* the Chapter 13 proceedings, they could have moved to modify the plan to provide for their payment ahead of Chase." Pet. Br. 44. This argument misses the point: Because creditors had a right to plan payments held by the chapter 13 trustee, unsecured creditors did not "sle[ep] on their rights" (*id.*) by not seeking to modify the plan. Instead, they reasonably relied on the terms of the confirmed plan, which made clear that those payments belonged to creditors and would be distributed according to plan terms.[13]

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principle is sufficient to guard against the strategic behavior petitioner hypothesizes.

[13] Petitioner is also wrong that "the bulk of the creditors to which respondent distributed funds after conversion had no entitlement under the confirmed plan to receive those payments from the estate so early in the case." Pet. Br. 44. Part of the funds were paid to a secured creditor, plainly entitled to distribution under the plan. JA28-29 (¶C) ("secured creditors whose claims are allowed shall be paid ... a principal amount equal to the value of their collateral"). With respect to unsecured creditors, the plan

Finally, petitioner quibbles with the proposition that chapter 13 reflects a *quid pro quo* on the ground that "[c]reditors are virtually always better off if a debtor first attempts to proceed under Chapter 13 and then converts than they are if the debtor files immediately under Chapter 7." Pet. Br. 46. This is wide of the mark. To be sure, chapter 13 is intended to be advantageous for debtors and creditors alike. But it remains the case that a confirmed chapter 13 plan embodies a bargain between debtors and creditors in which the debtor makes payments to creditors in return for certain benefits, and that creditors obtain a property interest in those payments once made.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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provides that "[p]ayments to general unsecured creditors shall be made on a pro rata basis as funds become available after secured and priority claims have been paid in full." JA29-31 (¶D). The effect of that provision is to give unsecured creditors the right to any funds not necessary to satisfy the claims of secured creditors.

Respectfully submitted,

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FEBRUARY 2015

REPLY BRIEF

No. 14-400

IN THE

Supreme Court of the United States

CHARLES E. HARRIS, III,

Petitioner,

v.

MARY K. VIEGELAHN, CHAPTER 13 TRUSTEE,

Respondent.

On Writ Of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

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REPLY BRIEF FOR THE PETITIONER

Contrary to respondent's suggestion, the Bankruptcy Code answers the question presented. Congress expressly and unambiguously authorized Chapter 13 debtors to convert to Chapter 7 "at any time." 11 U.S.C. § 1307(a). When a debtor makes that conversion, it takes effect immediately and ends the Chapter 13 proceeding. *Id.*; see also 11 U.S.C. § 103(i). Any confirmed plan is then no longer "bind[ing]," and the Chapter 13 trustee cannot "make payments to creditors under the plan." 11 U.S.C. §§ 1327(a), 1326(c). The trustee's service terminates, post-petition earnings cease to be property of the estate (unless the conversion was in bad faith), and those funds belong to the debtor. 11 U.S.C. §§ 348(e)–(f), 1327(b). All of this flows directly from the Code.

As respondent would have it (Resp. Br. ("Br.") 1), however, these statutory directives have no bearing on what a trustee does with post-petition funds she is holding when a conversion to Chapter 7 takes place following plan confirmation. But respondent's attempt to avoid the statute rests on a startling and erroneous premise: After a Chapter 13 plan is confirmed, she argues, those funds are "not 'property of the estate'" at all. Br. 35, 40. Rather, she (now) says, these funds "belong to creditors." *Id.* at 15, 19, 26–27, 30–32, 35, 45. Respondent thus fashions herself *not* as a bankruptcy trustee, but rather as an "escrow agent" or "common-law trustee" who serves as a mere "conduit" of funds to which creditors have obtained property rights. *Id.* at 15–26.

That reimagining of Chapter 13 finds no footing in the Bankruptcy Code. Respondent hardly contends otherwise, and instead resorts to viewing Chapter 13's "overarching structure" through her preferred "lens" of escrow and common-law trust. Br. 1, 13, 24 n.5. But the statutes contradict that theory. At least half a dozen times, the Bankruptcy Code specifies that funds held by a Chapter 13 trustee *are* "property of the estate"—*not* property of creditors. See pp. 6–7, *infra*. And as recently as her brief in opposition, respondent acknowledged as much. See Opp. 9 ("[F]unds voluntarily paid by the Debtor (even from wages) * * * *belong to the Chapter 13 estate*.") (emphasis added).

Respondent fares no better in observing that a confirmed Chapter 13 plan is "binding" and that a Chapter 13 trustee has authority to "make payments to creditors under the plan." Br. 16–18, 29 (discussing 11 U.S.C. §§ 1326(a), (c), 1327(a)). Through the very act of conversion, a Chapter 13 plan is nullified and the trustee who administers it dismissed. Those statutes thereby cease to apply, and they do not establish that funds "belong to creditors" beforehand. Even the Fifth Circuit soundly rejected respondent's theory, recognizing that there is "no support for [respondent's] rule in the Bankruptcy Code or in any legislative history." Pet. App. 18a. On this the circuits are in agreement.[1]

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[1] See *In re Michael*, 699 F.3d 305, 312–313 (3d Cir. 2012) ("No provision in the Bankruptcy Code classifies any property, including post-petition wages, as belonging to creditors."); *Arkison* v. *Plata (In re Plata)*, 958 F.2d 918, 922 (9th Cir. 1992) ("A Chapter 13 creditor's interests do not vest until the monies

Stripped of the false premise that undisbursed funds "belong to creditors," respondent's attempt to evade the statutory text comes up well short. Section 348(f) directs that the post-petition earnings at issue here remain "property of the estate in the converted case" only upon a bad-faith conversion. Section 348(e) "terminates" the Chapter 13 trustee's "service" as the estate's representative and disbursing agent. And Section 1327(b) vests the former property of the estate in the debtor.

Not surprisingly and in any event, respondent's extra-textual approach to the question presented results in an unworkable rule unintended by Congress. Almost in passing, respondent notes that the purported escrow account for creditors is established only "following" the resolution of "contingencies in the plan regarding creditors' rights to payment." Br. 13. Fully stated, respondent's proposed rule is that "once [1] a plan is confirmed, [2] the bankruptcy court has resolved creditors' claims, and [3] any other contingencies provided for by the plan have been satisfied, the conditions of the escrow are met." *Id.* at 22. Those *post*-confirmation "conditions" are significant, and they demonstrate that "confirmation of a plan" is not the "sharp divide" respondent claims. *Id.* at 5. This case is a prime example: The "contingencies provided for by [petitioner's] plan" for the payment of unsecured creditors had not been "satisfied" when petitioner

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are distributed."); *Resendez* v. *Lindquist*, 691 F.2d 397, 398 (8th Cir. 1982) (referring to plan payments as "property of the estate in the possession of the Chapter 13 trustee").

converted to Chapter 7. *Id.* at 22. Thus petitioner would win *even under respondent's rule.*

Finally, respondent's approach is contrary to congressional goals underlying Chapter 13, Chapter 7, and the debtor's right to choose whether and when to convert between them. It is clear—not "fanciful" (Br. 42)—that continuing payments to creditors out of debtors' post-petition earnings following conversion would deter debtors from choosing or continuing to proceed under Chapter 13. See Pet. Br. 23–26. Respondent also readily admits (at 43–44) that her reading would treat undisbursed funds differently in a case that ends in conversion than in one that ends in dismissal. She does not explain why her preferred escrow and trust analogies are effective in the former but not the latter. And respondent is wrong that the funds at issue are a "*quid pro quo*" (Br. 46) that the Chapter 13 debtor irrevocably commits to his Chapter 13 creditors for the privilege of trying to repay them *as much or more* than they would receive in a Chapter 7 case. Returning any undisbursed plan payments to the debtor who converts his case out of Chapter 13 in good faith is the natural and intended effect of Congress's decision to let debtors make such a conversion "at any time." 11 U.S.C. § 1307(a).

I. Chapter 13 Plan Payments Are Property Of The Estate And Do Not "Belong" To Creditors Before They Are Distributed

Respondent's entire argument depends on a demonstrably false premise: that a debtor's post-confirmation payments to a Chapter 13 trustee are not property of the estate, but instead belong to

creditors. In this view, a Chapter 13 trustee holds property *of the creditors* "effectively" in an escrow account or common-law trust. *E.g.*, Br. 15. That conception of Chapter 13 is unmoored from the Bankruptcy Code.

A. Plan Payments To Chapter 13 Trustees Are "Property Of The Estate"

Respondent's argument that trustees have the authority to make post-conversion distributions to creditors flows from her assertion that "the funds at issue here—post-confirmation payments made to a trustee for the purpose of distribution to creditors—are *not* 'property of the estate.'" Br. 35; see also *id.* at 40. Those funds, respondent says, "belong to creditors," *id.* at 15, 26–27, 30–32, who "obtain a property interest in those payments once made" to the trustee, *id.* at 46. That is a new argument, and it is wrong.

For starters, respondent's brief in opposition in this Court, and both of her briefs in the court of appeals, acknowledged that "funds voluntarily paid by the Debtor (even from wages) * * * *belong to the Chapter 13 estate*." Opp. 9 (emphasis added); Resp. C.A. Br. 23 (same); Resp. C.A. Reply Br. 4 (same); accord Resp. C.A. Reply Br. 3 ("In this case, Debtor's wages were part of the bankruptcy estate up until conversion."); *id.* at 7 ("In the case at bar, Debtor's wages were (and still are) part of the estate up until conversion."). Respondent's new argument is waived. See, *e.g.*, *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 212 n.2 (2004) (citing S. Ct. R. 15.2).

As for the merits of respondent's new position, she had it right the first, second, and third time. The

Bankruptcy Code says, repeatedly, that a Chapter 13 trustee holds "property of the estate." For example:

- Under Chapter 13, "earnings from services performed by the debtor after commencement of the case" are "[p]roperty *of the estate*." 11 U.S.C. § 1306(a)(1) (emphasis added). There is no exception for such earnings that are placed in the Chapter 13 trustee's possession. By contrast, either a debtor or a trustee can have "possession of the property *of the estate*" depending on the terms of "a confirmed plan or order confirming a plan." 11 U.S.C. § 1306(b) (emphasis added).
- Creditors in a Chapter 13 case make claims *against the estate*. See 11 U.S.C. § 502(e)(1)(A) (referring to a "creditor's claim against the estate"); 11 U.S.C. § 502(j) (referring to "payment or transfer from the estate" to "a holder of an allowed claim"). In respondent's view, a creditor's claim is against "escrowed" funds.
- Chapter 13 trustees are the "representative *of the estate*." 11 U.S.C. § 323(a) (emphasis added). Respondent would make them the representative *of the creditors*.
- Chapter 13 trustees are authorized to "make [a] deposit or investment of the money *of the estate* for which [the] trustee serves," subject to statutory safeguards. 11 U.S.C. § 345 (emphasis added); see also J.A. 46. Under respondent's theory, Chapter 13 trustees lack authority to deposit post-confirmation payments into a bank account (or their authority to do so emanates from some other source, unconstrained by Section 345's explicit safeguards).

- Chapter 13 trustees must make a final report and account that covers their "administration *of the estate*." 11 U.S.C. § 704(a)(9), *incorporated by* 11 U.S.C. § 1302(b)(1) (emphasis added); see Ch. 13 Standing Trustee's Final Rpt. & Account, *In re Harris*, No. 10-50655, Doc. 36 (Bankr. W.D. Tex. Dec. 6, 2011) (accounting for respondent's "administration of the estate" by detailing the receipt and disbursement of post-confirmation plan payments).
- Chapter 13 trustees shall dispose of "any remaining property *of the estate*" ninety days "after the final distribution under section * * * 1326." 11 U.S.C. § 347(a) (emphasis added); see also J.A. 48. In respondent's world, however, once a plan is confirmed there *is* no "remaining property of the estate" in the trustee's possession.[2]

Those statutes squarely contradict respondent's novel theory. Perhaps that explains why the

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[2] Respondent notes (Br. 37 n.8) that courts have taken different approaches to how plans and confirmation orders go about designating that property remains in the estate after confirmation, rather than vesting in the debtor under the default rule in Section 1327(b). Most courts have held that whenever a confirmed plan provides for payments to a trustee it "otherwise provide[s]" for those funds to remain property of the estate. 11 U.S.C. § 1327(b). A minority has held that such a provision does not, without more, trump Section 1327(b)'s debtor-vesting default rule, meaning that such payments are property of the debtor upon confirmation. But that is not an issue here; the confirmation order provided for *all* property of the estate to *remain* property of the estate *until conversion*. J.A. 48. In any event, *no* approach to Section 1327(b) characterizes plan payments as property *of the creditors*.

National Association of Chapter 13 Trustees (NACTT), as *amicus curiae*, stops short of endorsing respondent's position that plan payments "belong" to creditors and are not "property of the estate." See NACTT Br. 15 (arguing that the Fifth Circuit correctly held that "creditors need not hold 'vested rights' to funds in order to have claims to the funds that are superior to the debtor's"); see also *id.* at 2 ("A chapter 13 trustee * * * is empowered to * * * collect property of the estate.").

Not surprisingly, moreover, respondent provides no meaningful authority for her supposedly "common sense" and "plain English" belief that earnings made "property of the estate" by Section 1306(a)(2) lose that character once transferred to a Chapter 13 trustee under a confirmed plan. For that remarkable proposition, respondent relies entirely (at 36) on the dissenting opinion in *In re Michael* (which itself acknowledged that Chapter 13 "creditors receive money paid into the Chapter 13 estate," 699 F.3d at 320), and an inapposite analogy to *Clark* v. *Rameker*, 134 S. Ct. 2242 (2014).[3] It would work a massive change to bankruptcy law if property of the estate ceased to belong to the estate simply because a bankruptcy trustee had taken possession of it under a confirmed plan.

Respondent also contends that *undistributed* plan payments must "belong" to creditors because

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[3] Like AFSA's milk-and-bread analogy (AFSA Br. 20–21), respondent's analogy to *Clark* assumes the answer it seeks by treating a Chapter 13 trustee as a mere conduit for funds that "belong to creditors," rather than as a bankruptcy trustee who possesses property of the estate.

petitioner does not claim to be able to recapture lawfully *distributed* funds. See Br. 28–29. But respondent cites no authority for the notion that conversion must render the Chapter 13 proceedings void *ab initio* to be effective as to undistributed property. To the contrary, once a Chapter 13 trustee has lawfully distributed property of the estate to creditors who hold allowed claims, those funds are no longer property of the estate and the bankruptcy court's jurisdiction over those funds ends. That does not mean, however, that creditors have property rights over funds not distributed to them that remain in the estate.

Finally, *amici* suggest that plan payments from post-petition earnings are not property of the estate because Section 1322(b)(8) allows creditors to be paid out of either property of the estate or property of the debtor. NACTT Br. 7. That option (which facilitates direct debtor disbursements) does not affect how the Code defines which is which, however, and nothing in Section 1322(b)(8) suggests that payments to creditors come out of escrowed "property of the creditors."

B. Sections 1326 And 1327(a) Do Not Authorize Chapter 13 Disbursements After Conversion To Chapter 7

Respondent and her *amici* cite two Code provisions purportedly showing that plan payments in the possession of the trustee "belong" to creditors, not to the estate: (1) Section 1327(a), which makes confirmed plans "binding," and (2) Section 1326, which authorizes trustees to make payments to creditors under the plan. Br. 17–18, 20, 24.

According to respondent, those provisions make the Chapter 13 trustee "an agent who is bound to carry out the terms and conditions of a contract between the debtor and his creditors." *Id.* at 19.

But that argument has a critical flaw: Sections 1326 and 1327(a) *cease to apply* when a debtor converts his case to Chapter 7. Section 103(i) of the Bankruptcy Code provides that "Chapter 13 of [Title 11]" (*i.e.*, 11 U.S.C. §§ 1301–1330) "applies only in a case *under such chapter*." 11 U.S.C. § 103(i) (emphasis added). When petitioner converted his case to Chapter 7, it immediately became a case "under" Chapter 7 to which the relevant portion of *that* chapter (*i.e.*, 11 U.S.C. §§ 701–728) applied. See 11 U.S.C. § 103(b).

Indeed, the principal consequence of conversion is to immediately terminate the Chapter 13 proceeding. "It is well settled," the court of appeals acknowledged, "that upon conversion to Chapter 7, 'the chapter 13 plan and the order confirming that plan are no longer in force.'" Pet. App. 18a (quoting *In re Doyle*, 11 B.R. 110, 111 (Bankr. E.D. Pa. 1981)); see also *In re Michael*, 699 F.3d at 313. Thus, the confirmed plan is no longer "bind[ing]" (§ 1327(a)), and the trustee no longer has any statutory authority to "make payments to creditors under the plan" (§ 1326(c)).[4]

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[4] Respondent's *amici* argue that Section 1326(a)(2)'s final sentence applies to *post*-confirmation plan payments, not just to the *pre*-confirmation payments referred to in the paragraph's preceding sentence (and then referenced by the final sentence's phrase "such payments"). NACTT Br. 8–11; AFSA Br. 8–12. That is mistaken, as the court of appeals held below. See Pet.

Respondent's argument appears to be that because Sections 1326 and 1327 *did* apply when the debtor made his plan payments, they somehow *continue* to govern what the trustee does with those funds after conversion. See Br. 17–18. Not so. That is antithetical to the very notion of conversion. Plan provisions that *had* governed a trustee's disbursements to creditors do not continue to apply in the converted case any more than do plan provisions that *had* governed the debtor's obligation to make payments to the trustee. Respondent would effectively graft onto Section 103(i) new language to make Chapter 13 applicable not only to cases proceeding "under such chapter," but also to cases converted to another chapter until funds held by the former trustee in the former chapter have been disbursed. That is not the statute that Congress wrote or intended.

Respondent also has it exactly backward when arguing (at 17, 29) that Chapter 13 debtors' ability to pay creditors directly supports her theory. Instead, it further demonstrates that property rights shift to creditors only upon *disbursement*. Petitioner's confirmed plan, for example, required him to "direct pay" his future mortgage payments to Chase (as opposed to payments on his arrears, which the trustee would make). J.A. 34. Until petitioner *made* such payments, the funds did not "belong" to Chase.

App. 14a–18a. Section 1326(c) is what authorizes trustees to distribute post-confirmation plan payments to creditors "under the plan." In any event, whether Section 1326(a) or (c) applied to the funds at issue *during* the Chapter 13 proceeding, *neither* of them applied after conversion to Chapter 7.

There is no reason for a different rule when the trustee, instead of the debtor, is the plan's disbursing agent.

Respondent cites Sections 1328(a) and 1329(a) as evidence that "it is the time at which the debtor pays the trustee that is legally significant." Br. 31. Yet respondent ignores Section 348(f)(1)(C), which makes clear that it is the "date" and "time of conversion" that is the "legally significant" event insofar as ending payments to creditors in the Chapter 13 case. See NACBA Br. 21–22. This provision fixes the status of certain creditors in a converted case based on whether they had been "paid in full" or "fully cured" as of the "date" or "time of conversion." Respondent, however, would have it that disbursements to creditors in Chapter 13 continue *after* that "date" and "time," leading to anomalous results unintended by Congress.

In short, respondent's analogy from Chapter 13 to the common law of escrow and trust falls flat. A salient feature of escrow is its irrevocability. There is no "deposit in escrow" where "the depositor reserves a power of revocation." *Restatement (Second) of Trusts* § 32 cmt. d (1959). But Congress made Chapter 13 plans *revocable* by the debtor—granting him an absolute right to convert to a Chapter 7 proceeding "at any time." 11 U.S.C. § 1307(a); see also NACTT Br. 5 ("The debtor has the power to terminate a plan at virtually any time."). Likewise, under the law of trusts, the apt analogy (if any) is to the *revocable* trust settlor's right to obtain trust property upon exercising his right to revoke. See generally Mary F. Radford, George G. Bogert, & George T. Bogert, *The Law of Trusts and Trustees*

§ 1000 (3d ed. 2006); *Restatement (Third) of Trusts* § 63 (2003).

II. The Bankruptcy Code Requires That Chapter 13 Trustees Return Undistributed Post-Petition Earnings To The Debtor Upon Conversion

Respondent is wrong to say that "[n]o provision of the Bankruptcy Code answers" the question presented. Br. 1. Congress has authorized debtors to convert from Chapter 13 to Chapter 7 "at any time," 11 U.S.C. § 1307(a), and prescribed effects of such a conversion that resolve this case. Replacing those statutes with respondent's "escrow" regime of contingent creditor property rights would violate those statutory directives and, in any event, prove unworkable.

A. Respondent Cannot Evade The Statutory Effects Of Conversion

1. *Section 348(f).* Respondent contends that Section 348(f) "has no bearing on the question presented." Br. 33. To support that view, respondent rehashes the theory that post-petition earnings paid to a Chapter 13 trustee after plan confirmation "belong to creditors." Br. 35–36.

As we have explained, however, respondent's property-rights argument lacks any basis in the Bankruptcy Code. See pp. 4–12, *supra*. Plan payments held by the Chapter 13 trustee *are* "property of the estate * * * on the date of conversion." 11 U.S.C. § 348(f)(1)(A). If a conversion to Chapter 7 is made in bad faith, those funds become "property of the estate in the converted case"

under the unambiguous terms of Section 348(f)(2). In those circumstances, the Chapter 13 trustee is obligated to turn over those funds to the Chapter 7 trustee for administration and potential disbursement to creditors. Fed. R. Bankr. P. 1019(4). If the conversion is made in good faith, by contrast, post-petition earnings that are among the "property of the estate on the date of conversion" do not become "property of the estate in the converted case." 11 U.S.C. § 348(f)(1)(A).

The message to debtors is clear: Convert in good faith and post-petition earnings held in the estate are yours; convert in bad faith and those funds remain in the estate and available to your creditors. There is no basis to suppose that Congress intended post-petition earnings saved from the statute's bad-faith-conversion penalty to be disbursed to creditors all the same by a terminated Chapter 13 trustee. For the same reason, it is unpersuasive to argue, as respondent does (at 33), that Section 348(f) "simply does not address" what happens to "post-confirmation, pre-conversion payments" after a good-faith conversion.[5]

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[5] Respondent is wrong (Br. 33–34) that Congress's intent was limited to addressing the facts of two cases specifically cited in a House report. The stated legislative intent was to correct an error made in cases "such as" those, see Pet. Br. 23–26, one of which expressly relied on cases adopting respondent's approach to post-petition plan payments, see *In re Lybrook*, 951 F.3d 136, 138–139 (7th Cir. 1991) (discussing *Resendez*, 691 F.2d at 398–399). In any event, the text of Section 348(f) contains no exception for post-petition earnings held by the Chapter 13 trustee.

2. *Section 348(e).* By its terms, this provision prohibits the trustee from, as respondent contends, conducting business as usual: "Conversion * * * terminates the service of any trustee * * * serving in the case before such conversion." 11 U.S.C. § 348(e). In respondent's view, that "sheds absolutely no light" on whether Chapter 13 trustees should keep disbursing money to creditors after conversion of a case (and according to the terms of an inoperable Chapter 13 plan). Br. 39. That is implausible.

Respondent's "service," as she explains it, is that of a "disbursing agent of * * * payments to creditors." Br. 18; see also *id.* at 19 ("[A] trustee serves as a disbursing agent with respect to plan payments."). Petitioner disputes that funds the trustee disburses "belong" to creditors before they are disbursed, but not that the trustee acts as a disbursing agent. See Pet. Br. 27. That *is* the "service" that "terminates" upon conversion. See, *e.g.*, *Black's Law Dict.* 1576 (10th ed. 2014) (defining "service" as "[t]he official work or duty that one is required to perform"). As the bankruptcy court put it, "the trustee can no longer be functioning as the trustee, and, therefore can no longer be functioning as the disbursing agent." Pet. Br. 10 (citation omitted). That does not take the statute "too literally" (Pet. App. 10a (quoting *In re Parrish*, 275 B.R. 424, 430 (Bankr. D.D.C. 2002)); it affords the statute its plain meaning.

It is no answer, as respondent contends, that the trustee cannot "keep" undistributed funds after conversion and has to give them to someone. Br. 39. Section 348(e) is not silent on who that "someone" is—or at least on who it is *not*. The effect of Section 348(e) is to remove the Chapter 13 trustee as the

"representative of the estate" (11 U.S.C. § 323(a)) against which creditors assert their claims. It terminates the Chapter 13 trustee's authority and obligation to continue disbursing property to those creditors. At that point, any "property of the estate" must be turned over to the new Chapter 7 trustee, who takes over and becomes responsible for any future disbursements to creditors. Fed. R. Bankr. P. 1019(4). A Chapter 13 trustee cannot continue her "service" as a disbursing agent merely by recasting it as a post-conversion "administrative duty." The specific delineation by statute and rule of the trustee's limited administrative duties after conversion (see Br. 38) counsels *against* understanding Congress to have also conveyed this additional—and substantial—power on the "terminate[d]" trustee.

3. *Section 1327(b).* Respondent fails to square her view with the fact that confirmation "vests all of the property of the estate in the debtor" "[e]xcept as otherwise provided in the plan or in the order confirming the plan." 11 U.S.C. § 1327(b). Respondent proceeds, once again, from the flawed premise that petitioner's wages were "not property of the estate" and had already vested *in creditors*. Br. 40–41. But see pp. 4–12, *supra*. Likewise, respondent contends (as did the court of appeals) that when the plan and order provided for payments to the trustee, it made it so that such funds *never* vested in the debtor under Section 1327(b). Contra *In re Michael*, 699 F.3d at 313; *Nash* v. *Kester (In re Nash)*, 765 F.2d 1410, 1414 (9th Cir. 1985). But there is no reason to read a provision dealing with *possession* of property of the estate as governing whether such property can vest in the debtor at conversion.

A debtor's confirmed plan and confirmation order cease to be effective at conversion. So, too, do any exceptions they contain to vesting property of the estate in the debtor under Section 1327(b). That is exactly how the plan and order worked in petitioner's case. The "order confirming the plan" (11 U.S.C. § 1327(b)) stated that "[s]uch property as may revest in the Debtor shall so revest only upon further Order of the Court or upon dismissal, *conversion*, or discharge" (J.A. 48 (emphasis added)). Under Section 1327(b) and that order, debtor's post-petition earnings vested in him when he converted his case to Chapter 7.

B. Respondent's Approach Impractically Depends On The Trustee's Resolution Of Post-Confirmation "Contingencies" And "Conditions"

Respondent's proposed rule is that "once [1] a plan is confirmed, [2] the bankruptcy court has resolved creditors' claims, and [3] any other contingencies provided for by the plan have been satisfied, the conditions of the escrow are met." Br. 22. Those second and third conditions are significant, and they prove respondent's view to be unworkable.

First, as those conditions demonstrate, respondent's approach does not make plan confirmation an on/off switch for creditors' purported property rights to undisbursed funds. As respondent acknowledges, Chapter 13 trustees can make payments only to creditors "holding *allowed* claims." Br. 7 (emphasis added); see also J.A. 27, 47. The claims-allowance process can be lengthy, however, and it often continues well after the bankruptcy

court has confirmed a plan. Br. 7.; see also Fed. R. Bankr. P. 3002(c) (providing most creditors 90 days from the initial meeting of creditors to file proofs of claims). Respondent admits that, under her approach, a trustee would still "be required to await the conclusion of that process to determine the amount each creditor is entitled to receive under the plan." Br. 7. There is no support in the Code for having *property rights* turn on the vagaries of that process.

What is more, the twists and turns of claims allowance would render respondent's rule unwieldy in practice. To take just a few examples: Do creditors obtain property rights to undisbursed funds when their proofs of claims are filed (and "deemed allowed," 11 U.S.C. § 502(a)), then lose them when an objection is filed (see *ibid.*), only then to regain those rights if the objection is denied? Do undisbursed funds "belong" to a creditor who by happenstance filed a proof of claim moments before the debtor's notice of conversion because that claim is momentarily "deemed allowed" even though no one—including the trustee—had a chance to object? What about the creditor whose proof of claim was subject to a frivolous objection pending at the time of conversion—is he out of luck? In a significant understatement, the NACTT points out (at 33) that "[t]he Fifth Circuit * * * did not provide clear guidance for determining the details of the creditors' 'superior' claim to the undistributed funds." Neither does respondent.

Indeed, this case shows why the "contingencies" built into respondent's rule are fatal to her position. Petitioner's confirmed plan provided for the payment

of unsecured claims only "as funds become available after secured and priority claims have been paid in full." J.A. 30. When petitioner converted his case, however, his secured creditors had *not* been "paid in full." Chase had received relief from the automatic stay, but that did not resolve its claim or amount to its payment "in full." See NACTT Br. 27 n.9. Even under respondent's proposed rule, therefore, the "contingencies in the plan regarding [unsecured] creditors' rights to payment" had not been satisfied when petitioner converted his case to Chapter 7.[6]

III. Post-Conversion Distributions Penalize Debtors, And Respondent's Contrary Policy Rationale Is Misguided

Respondent's post-conversion distribution penalized petitioner for not having converted to Chapter 7 as soon as Chase obtained relief from the stay. That penalty was unsupported by the Code and undermined Congress's intent in giving the debtor control over when to make a good-faith conversion. No "bargain" petitioner had with his creditors demands a different result.

1. Respondent finds it "fanciful" that her rule might "influence" debtors against electing to make

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[6] Nine days *after* petitioner converted to Chapter 7, respondent filed a recommendation to "treat[]" Chase's $5,574.53 claim as "allowed" in the exact amount Chase had already been paid ($1076.79). See Trustee's Recommendations Concerning Claims, *In re Harris*, No. 10-50655, Doc. 34 (Bankr. W.D. Tex. Nov. 30, 2011), at 1–2. But cf. 11 U.S.C. § 348(e). Having thus rendered Chase's claim "paid in full" *post*-conversion, respondent disbursed funds to unsecured creditors the next day.

their future income "property of the estate" under Chapter 13 instead of protecting it under Chapter 7. Br. 42. It is not. Debtors generally elect to proceed under Chapter 13 only if they believe that, by devoting future income to the estate, they will be able to obtain a discharge of their debts without liquidating assets. That goal proves elusive in a majority of cases, however, so debtors' right to withdraw future income from the estate "at any time" by converting to Chapter 7 is an important inducement to attempt Chapter 13 in the first place.

What is more, respondent ignores that her rule would adversely "influence" whether debtors *maintain* their Chapter 13 case when the going gets tough. Here, for example, petitioner stuck with Chapter 13 for a year after Chase obtained relief from the stay. Pet. App. 4a. As respondent explains, debtors in those circumstances "commonly reach agreements with their mortgage servicers to modify their mortgage loans," and then obtain corresponding "plan modification[s]." Br. 10; see also NACTT Br. 27 n.9. It is in all parties' interest to encourage such efforts. See Br. 46. If a debtor knows that the plan payments he makes while trying to salvage his Chapter 13 proceeding will be lost if he fails, he will have good reason not to take the risk. There is no dispute in this case that if petitioner had converted his case immediately when Chase obtained relief from the stay, the $4,319 at issue would be his today.

2. Respondent tacitly concedes (at 43–44) that her proposed rule would have Chapter 13 trustees treat undistributed funds "differently" upon conversion than upon dismissal. But cf. Opp. 20–21. There is no justification for that anomaly.

First, respondent cannot explain why a debtor's payments to the Chapter 13 trustee "belong to creditors" in "escrow" when the Chapter 13 case ends *in conversion*, but not when it ends *in dismissal*. The fact is, undistributed funds are property of the estate in either case, and they are restored to the debtor unless there is "bad faith" (upon conversion, see § 348(f)) or "cause" (upon dismissal, see § 349(b)).

Second, respondent's reliance (at 43) on "state-law remedies" available to creditors after dismissal does not help. If petitioner had dismissed his case and received his undistributed plan payments, he could have used those funds to pay non-dischargeable debt (like student loans) or post-petition obligations. That is the same use to which petitioner could have put those funds if they had been refunded to him upon conversion. In practical terms, the end result would be the same. There is no basis for believing that petitioner's unsecured creditors could have "attach[ed]" the funds at issue upon dismissal and ended up in the same position they were in after respondent's post-conversion disbursements.[7]

3. The $4,319 at issue was not petitioner's "*quid pro quo*" for any "benefits" his Chapter 13 creditors provided to him. Br. 46; see also *id.* at 27–28 & n.6. As we have explained (Pet. Br. 45–46), those

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[7] Respondent mistakenly assumes, moreover, that any Chapter 7 filing by a debtor following voluntary dismissal of a Chapter 13 case would be prevented as "[b]ad-faith gamesmanship." Br. 44 n.12. Exercising rights that the statute affords is not bad faith. Cf. 3 *Collier on Bankruptcy* § 348.07, at 348-25 (16th ed., Alan N. Resnick & Henry J. Sommer eds., 2012).

creditors had no "benefits" to give. They stood to receive nothing in petitioner's no-asset Chapter 7 case, so they *gave up* nothing while petitioner pursued an unsuccessful attempt to repay them under Chapter 13.

More generally, debtors and creditors alike benefit from good-faith attempts to pay claims under Chapter 13 rather than liquidation under Chapter 7.[8] A Chapter 13 debtor's obligation—the "bargain" he makes under that Chapter—is to fund his estate on a monthly basis out of his disposable income. Those funds become *available* for disbursement to creditors under a confirmed plan (subject to its contingencies). But nothing in Chapter 13 makes those funds a sort of monthly Chapter 13 subscription fee to creditors who stand to *gain* from the debtor's voluntary election of such a proceeding. Contra NACTT Br. 17–18 (analogizing a debtor's plan payments to life-insurance premiums).

4. Respondent's concern that refunding post-petition plan payments to debtors on conversion will lead to creditor "demands for daily distributions" and an "'administrative nightmare'" is unfounded. See Br. 30 (quoting *In re Redick*, 81 B.R. 991, 886 (Bankr. E.D. Mich. 1987)). Respondent provides no evidence that the sky has fallen in any of the many jurisdictions where petitioner's reading of the statute

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[8] Br. 46 ("[C]hapter 13 is intended to be advantageous for debtors and creditors alike."); AFSA Br. 4 ("[U]nsecured creditors often receive more under a Chapter 13 plan than in a Chapter 7 liquidation"); NACTT Br. 7 ("Congress favors Chapter 13 because it promises better results for both debtors *and* creditors.").

has prevailed for some time. That is not surprising. Nothing in bankruptcy law obligates Chapter 13 trustees to accede to demands for distributions so frequent that they become "*de minimus*" while imposing an unreasonably "skyrocket[ing]" cost. *Ibid.* (same).

5. Finally, even if respondent and her *amici* had the better of these policy arguments, they would still be making them to the wrong branch of government. Congress authorized debtors to convert from Chapter 13 to Chapter 7 "at any time," and Congress provided for post-petition earnings to remain "property of the estate in the converted case" only when such a conversion was made in bad faith. The natural consequence of those policy choices is to give debtors—not creditors, and not trustees—control over the timing of conversion. In the end, respondent's quarrel is with Congress.

CONCLUSION

For the foregoing reasons, and those set forth in our opening brief, the judgment should be reversed.

Respectfully submitted.

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MARCH 2015